

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATES: March 7 and 9, 2007

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

- I. Low-Pressure Fuel Evaporative System Testing
- II. Initial Testing of Test-Only Directed Vehicles at Gold Shield Stations

SECTION AFFECTED: §§ 3340.16, 3340.42, Article 5.5, and § 3392.2, Article 10, Title 16, Division 33, Chapter 1, California Code of Regulations¹

UPDATED INFORMATION:

The *Initial Statement of Reasons* is included in the file. No changes have been made which would warrant a change to the information contained therein.

LOCAL MANDATE:

A mandate is imposed on local agencies or school districts. Such mandate is not reimbursable pursuant to Section 6 of Article XIII B of the California Constitution or Section 17500, et seq. of the Government Code because it is not unique to local government. This proposed regulatory action affects both the private sector and the public sector (County of Los Angeles vs. State of California, et al., 43 Cal App 3d 46 (1987)).

SMALL BUSINESS IMPACT:

This action may have a significant adverse economic impact on small businesses. The following alternatives were proposed to lessen such adverse economic impact on small business and were rejected:

I. Low-Pressure Fuel Evaporative System Testing

1. The Bureau of Automotive Repair (Bureau) considered taking no action, allowing natural

¹ All regulation reference hereafter shall be to Title 16 of the California Code of Regulations, unless otherwise specified.

vehicle attrition to replace the older vehicles subject to this test; however according to the California Air Resources Board (ARB) this would not achieve the reductions required for 2010. Although most 1996 and newer vehicles self-monitor for fuel evaporative system leaks, attrition will not occur quickly enough to eliminate a significant number of older vehicles. According to ARB, in 2017, there will still be approximately 3 million 1976 to 1995 model-year vehicles with fuel evaporative systems needing inspection in California.

2. The Bureau did consider the testing equipment and procedures suggested in Part 51.357 of Title 40 of the Code of Federal Regulations. Part 51.357 calls for technicians to pressurize the gas tank with what could be characterized as a bicycle pump and use a manometer to monitor pressure decay. The cost of such equipment is approximately \$200 or less.

This approach does not compensate for temperature variations or fuel tank volume, which affect the accuracy of the test results. This approach would not maximize the potential emission reductions while minimizing false failures. Without correct compensation calculations, vehicles may falsely pass or fail the test. False failures could expose vehicle owners to unnecessary repair expense. The Bureau concluded that these devices would not meet the needs of the Smog Check Program, and would be far less effective than the selected alternative.

3. The Bureau also evaluated the equipment used in other states to perform this test and found that it is proprietary equipment, not commercially available. It is built specifically for use in localized and centralized, contractor operated test facilities and is not suitable for use in individual California Smog Check stations statewide.

After a careful and thorough evaluation of the trial data, the Bureau found that these testers did not provide accurate and consistent test results under all conditions. Consequently, given the wide range of testing conditions, the Bureau concluded that these products would not meet the needs of the Smog Check Program, would not be as effective, but would be comparable in cost to the alternative selected.

II. Initial Testing of Test-Only Directed Vehicles at Gold Shield Stations

No reasonable alternative has been considered, identified or brought to the attention of the Bureau.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

OBJECTIONS / RECOMMENDATIONS AND RESPONSES:

The following comments/objections/recommendations were made, either in writing or orally, during the public comment period or at the public hearings, regarding the proposed action:

I. Low-Pressure Fuel Evaporative System Testing

1. Tom Petrone, owner Smog King Test-Only Stations:

- a. I question whether the low-pressure fuel evaporative test (LPFET) equipment required for this new test procedure is worth the investment. My well run, well-marketed Test-Only businesses plug along fluctuating between the red and the black. I don't think the margin of profit is commensurate with the level of liability.

This comment/recommendation was rejected because:

Each Smog Check station operator must decide whether to purchase the equipment and remain in the Smog Check Program, or to leave the Program. That is a business decision that would have to be made by each business operator, based on his or her individual circumstances and/or preferences. The cost estimates that were provided in the Initial Statement of Reasons (ISOR) were based on good faith estimates obtained from the equipment manufacturers that have submitted equipment to the Bureau for certification testing. These business impact estimates should assist business operators in making these decisions.

- b. Will stations with multiple BAR-97 Emissions Inspection Systems (EIS) be required to purchase one LPFET for each EIS? My facilities operate two lanes each, not because of sufficient volume to do so, but because if one goes down I can maintain daily business. With four lanes between my two shops a \$12,000 hit would obviously be significantly more detrimental than \$6,000.

This comment/recommendation was rejected because:

Each individual Smog Check station will only be required to have a minimum of one LPFET. Each tester is a stand-alone piece of equipment that will operate and may be used independently of the EIS. Therefore, in a station with multiple lanes, one LPFET may be used to test vehicles that are not in the process of being tested with an EIS. Whether stations choose to purchase additional testers is entirely up to them. That would be a business decision that would have to be made by each business operator, based on his or her own individual needs and/or preferences.

- c. It's sad that in order to get the LPFET initiated, you're putting the carrot in front of the Gold Shield (GS) and Test-and-Repair industry by giving them a way to recoup their investment by remaining or becoming GS stations.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. Some Test-Only stations may wish to remain Test-Only stations or they may convert to Test-and-Repair stations. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances.

- d. I am concerned about the amount of time it's going to take to do the LPFET in addition to the normal procedures, and how many tests a Test-Only station can do in a day. How are they going to be able to stay afloat without charging more? The guys that do it right are going to take more time and have a reduced volume.

This comment/recommendation was rejected because:

The Bureau acknowledged in the ISOR that consumer costs would likely increase, but there would be benefits from improved health and reduced medical costs from better air quality.

The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

2. Robert L. Jacobs, J&J Auto Service

- a. I am not opposed to implementation of the LPFET, but I think that stations should have the option of not testing the model-year vehicles that require the LPFET and therefore not be required to purchase the LPFET equipment. I would rather turn away the very small number of vehicles in model years 1976-1995 that we currently test. After I pay the technician to perform the inspection, I am losing money. We have seen much fewer repairs in the last four years. A check of our records found only four certificates issued to model-years 1976-1995 vehicles in the last four years. These inspections were for transfer of ownership. All vehicles 10 years old and older

that need Smog Checks for registration renewal are required to go to Test-Only stations.

This comment/recommendation was rejected because:

Implementation of a uniform, standardized Smog Check test statewide, regardless of subject vehicle model-year (1976 and newer) exists to minimize motorist confusion. There is no distinction made in the licensing of Smog Check stations based upon the makes, models or model-years of the vehicles that the stations choose to test or not test. The basic testing and equipment requirements are the same for every station with the only significant difference being the use of the loaded-mode test method in the enhanced program area and the two-speed idle test method in the basic program areas, as prescribed in Section 44012 of the Health and Safety Code. That difference is based on the program area and not the types or model-years of the vehicles being tested.

Even in the case of the two distinct types of stations – Test-Only stations and Test-and-Repair stations – there is no significant difference between the types of tests performed. The only difference is in the repair equipment and tools required. Because Test-Only stations are prohibited from performing repairs, they are not required to maintain repair equipment and tools. However, since the LPFET will be performed in all program areas, and since all stations are licensed and authorized to perform Smog Check tests on all vehicles subject to testing, regardless of model-year, it is appropriate and necessary that all stations have the LPFET equipment. This is the case regardless of the limitations a station chooses to voluntarily impose on it self.

It should also be noted that not all components of the current test apply equally to all model-years of vehicles. For example, on-board diagnostic (OBDII) testing is required only on 1996 and newer model year vehicles. When it was added in 2002, all stations were required to purchase diagnostic devices and upgrade their Smog Check test equipment. The majority of stations chose to continue their participation in the Smog Check program.

This recommendation, if accepted, would require the creation of multiple Smog Check station classifications making it even more difficult for consumers to know where to take their vehicles when tests and/or repairs are required. A consumer with a pre-1996 vehicle might have to contact or visit a number of Smog Check stations before finding one that would be capable of testing their vehicle. This would be unnecessarily burdensome and complicated for consumers as well as program administration. Furthermore, there is no statutory authorization to create “limited” station licenses.

It is not true that all vehicles 10-years old and older are directed to Test-Only stations. None of those vehicles are directed in the non-enhanced program areas. While many of the '95 model-year and older vehicles in the enhanced program area are directed, not all of them are.

3. John Everett, R & S Service

- a. The LPFET equipment cost is a problem. In your documents you're talking about a \$7.00 increase in the price of a Smog Check. A \$7.00 increase will not cover the time it takes to add to this in terms of the inspection so that doesn't add up. To be able to recoup the costs of the machine, if you have to finance it, is going to be a burden.

This comment/recommendation was rejected because:

The cost estimates that were provided were based on good faith estimates obtained from the equipment manufactures that have submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded. The Smog Check inspection fee increase estimate provided in the ISOR is actually \$7.50 per inspection. A \$3000 LPFET device could be paid off in five years by charging \$1.50 for each of 2 tests per day, based on 200 workdays per year. The remaining \$6.00 labor per test would cover the estimated five minute test time at a labor rate of \$72 per hour.

4. Jonathan Morrison, California Motor Car Dealers Association

- a. We object to the proposed LPFET regulation because it will require all stations to purchase LPFET equipment, regardless of whether the station tests the affected model year vehicles.

Under their franchise agreement all of our members are required to hold a valid Smog Check station license issued by the Bureau. The types of smog inspections performed by our members primarily include: used car inventory, 6 model-years old or newer; biennial smog inspections on vehicles six model-years old or newer; and warranty repairs on vehicles that have failed a smog inspection (usually less than 10 model-years old). The proposed LPFET regulation exempts vehicles with Series II On Board Diagnostic (OBD II) systems that automatically detect and report any leaks by activating the malfunction indicator light. Vehicles of model-year 1995 and older would require the LPFET as part of the Smog Check inspection. As our members almost exclusively test vehicles exempt from the LPFET, the regulation should be amended to allow stations who choose not to purchase the LPFET equipment to certify that they will not perform Smog Check inspections on vehicles requiring the LPFET.

This comment/recommendation was rejected because:

Implementation of a uniform, standardized Smog Check test statewide, regardless of subject vehicle model-year (1976 and newer) exists to minimize motorist confusion. There is no distinction made in the licensing of Smog Check stations based upon the makes, models or model-years of the vehicles that the stations choose to test or not

test. The basic testing and equipment requirements are the same for every station with the only significant difference being the use of the loaded-mode test method in the enhanced program area and the two-speed idle test method in the basic program areas, as prescribed in Section 44012 of the Health and Safety Code. That difference is based on the program area and not the types or model-years of the vehicles being tested.

Even in the case of the two distinct types of stations – Test-Only stations and Test-and-Repair stations – there is no significant difference between the types of tests performed. The only difference is in the repair equipment and tools required. Because Test-Only stations are prohibited from performing repairs, they are not required to maintain repair equipment and tools. However, since the LPFET will be performed in all program areas, and since all stations are licensed and authorized to perform Smog Check tests on all vehicles subject to testing, regardless of model-year, it is appropriate and necessary that all stations have the LPFET equipment. This is the case regardless of the limitations a station chooses to voluntarily impose on it self.

It should also be noted that not all components of the current test apply equally to all model-years of vehicles. For example, on-board diagnostic (OBDII) testing is required only on 1996 and newer model year vehicles. When it was added in 2002, all stations were required to purchase diagnostic devices and upgrade their Smog Check test equipment. The majority of stations chose to continue their participation in the Smog Check program.

This recommendation, if accepted, would require the creation of multiple Smog Check station classifications making it even more difficult for consumers to know where to take their vehicles when tests and/or repairs are required. A consumer with a pre-1996 vehicle might have to contact or visit a number of Smog Check stations before finding one that would be capable of testing their vehicle. This would be unnecessarily burdensome and complicated for consumers as well as program administration. Furthermore, there is no statutory authorization to create “limited” station licenses.

- b. Under the Administrative Procedures Act, there are two necessity standards for regulations. One is that the regulation is necessary to effectuate the purpose of a statute or make clear a statute and we think that the Bureau has a strong argument for that. However, there is another necessity standard under Government Code Section 11342.2, which states that no regulation adopted or effective unless consistent and not in conflict with the statute and, this is the important part, reasonably necessary to effectuate the purpose of the statute. Requiring stations to purchase equipment that would never be used is not necessary to effectuate the purpose of the Smog Check statutes and again, we feel that the proper way to handle this problem would be to allow an exemption from the equipment requirement for those stations that certify they would not test non-OBD II vehicles.

This comment/recommendation was rejected because:

There is no statutory authorization permitting the Bureau to create ‘limited’ station licenses. There is statutory authority to adopt regulations establishing different equipment requirements for Test-Only stations and Test-and-Repair stations, and different test procedures between enhanced and non-enhanced program areas.

[See also Section I., comment 4. a., immediately above.]

- c. The six model-year exemption for new vehicles has drastically reduced the number of Smog Check inspections statewide, which reduces the amount of revenue received by Smog Check stations. The addition of new equipment and test requirements will increase station expenses. Although the price of the equipment is estimated at \$2,750, with an annual cost of \$100 in maintenance, we are concerned with the accuracy of these estimates. When the gas cap regulations were proposed the estimated purchase price was reasonable, however, when the regulations went into effect, the costs were significantly higher than estimated. We believe a similar effect will be seen if LPFET regulations are implemented mandating the purchase of one of only two potentially certified systems.

This comment/recommendation was rejected because:

The cost estimates that were provided were based on good faith estimates obtained from the equipment manufactures that have submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded.

The example given of higher than estimated costs is irrelevant and not comparable to the LPFET proposal. The fuel cap tester was an integral component of the BAR-97 analyzer required in 1998, not an add-on stand-alone device such as the LPFET.

- d. Another concern is the time this test will add to the Smog Check inspection, during which no other testing may take place. As a result, stations may need to increase their rates to compensate for the added labor costs, or they will absorb the extra costs and reduce their already slim profit margin.

This comment/recommendation was rejected because:

The Bureau acknowledged in the ISOR that consumer costs would likely increase, but there would be benefits from improved health and reduced medical costs from better air quality.

The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check*

Program, November 29, 2005. Aside from the equipment costs, the greater part of the estimated overall increase (\$7.50) was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

The LPFET may be used independent of the EIS to allow multitasking, which will save time and labor costs. For example, a waiting vehicle may receive the LPFET test while another vehicle is undergoing a Smog Check. The Pass/Fail decision from the LPFET will have to be noted and properly entered when the waiting vehicle undergoes its Smog Check.

- e. There is also a concern that the LPFET procedure may cause damage to vehicles being tested. Clamps are used to close off part of the vapor line to seal the charcoal canister, which could cause damage to the vapor line, creating further leaks in the system. The station will then be responsible for the cost of the part and labor to replace the damaged vapor line. The proposed LPFET procedure may not detect leaks because the clamps can seal a leak, which will not allow emissions to escape until after the test, when the clamps are removed. These undetected leaks could produce significant emissions for the two years between testing cycles, and cause the vehicle to fail as a gross polluter at the next Smog Check inspection.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose itself, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing

procedure would be limited to a very small area of a hose, usually very close to an end. The minor repair of components damaged during an inspection may be performed at a Test-Only station as provided in subdivision (b) of Section 44014.5 of the Health and Safety Code.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

- f. Many vehicle manufacturers require franchise owners to obtain LPFET equipment approved by their factory. Most of these testers can perform the functions required by the LPFET regulations, as they are usually capable of testing any closed system. Currently these testers lack only the ability to electronically transmit test data to the Bureau. If the Bureau will allow the existing testers to be modified in order to fulfill the data transmission requirement, specifications should be written into the regulations that would allow them to be certified by the Bureau.

This comment/recommendation was rejected because:

Any equipment manufacturer may submit their LPFET equipment to the Bureau for certification. If the equipment meets the Bureau's LPFET specifications, they could be eligible for certification and could be used to perform the LPFET. If there is an existing piece of equipment on the market that meets all of the specifications except the data storage and transmission requirements, the manufacturer could provide a retrofit or interface module that would allow the devices to meet those requirements. Neither the specifications nor the proposed regulation would preclude a manufacturer from submitting such a system. As of the date of publication of the ISOR, only two manufacturers had submitted equipment to the Bureau for certification.

5. Bob Klingenberg, President, Automotive Service Councils of California

- a. ASSCA believes the proposed regulations would have a significant statewide economic impact on business. We believe that the Bureau has not considered all of the alternatives that would lessen any adverse economic impact on consumers and small businesses.

This comment/recommendation was rejected because:

Three alternatives to LPFET were considered as described in the ISOR. No additional realistic alternatives for the functional testing of fuel evaporative systems of motor vehicles were provided during the public comment period.

- b. The industry will not support the Smog Check Program with the mandatory purchase of the LPFET equipment. Many stations will opt out of the program due to the lack of return on the investment.

This comment/recommendation was rejected because:

Each Smog Check station operator must first decide whether to purchase the equipment and remain in the Smog Check Program, or to leave the Program. These are business decision that would have to be made by each business operator, based on his or her own individual needs and/or preferences.

It has been the Bureau's experience in the past, that when major changes in the Program are made – such as requiring stations in all non-enhanced areas to upgrade their emissions analyzers to the BAR-97 EIS platform at a cost of between \$15,000 and \$18,000 – there has been no significant change in overall station population among the affected stations. That is not to say that some stations will not choose to leave the Program, but rather that the normal influx of new stations coming into the Program will offset those losses and station population will stabilize relatively quickly.

- c. The loss of Test-and-Repair stations will affect the cost of inspections and/or repairs and limit the consumer's options for choosing a facility for Smog Check inspections and/or repairs.

This comment/recommendation was rejected because:

The Bureau acknowledged in the ISOR that consumer costs would likely increase, but there would be benefits from improved health and reduced medical costs from better air quality.

[See also Section I., comment 5. b., immediately above.]

- d. We believe the studies relating to business impact provided are flawed because they do not take into account changes in the vehicle retirement programs. These programs have greatly accelerated the number of retired vehicles and are expected to continue to improve in the near future. There are also too many vehicles that would be exempted from the LPFET.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, this proposed action. Fewer than 20,000 vehicles participate in the Bureau's Vehicle Retirement Program annually. This is a small fraction of the 9.2 million vehicles tested yearly and would not change the estimates set forth in the ISOR.

As discussed in ARB's November 29, 2005 report, from the results of the Bureau's 2005 roadside testing, it was determined that almost 92% of the affected fleet ('95 and older model-year vehicles) would be testable. The only vehicles that will be excluded from LPFET will be the '96 and newer model year vehicles with OBD II self-testing capabilities, and those older vehicles that have evaporative emissions control systems that cannot be tested due to their configuration or lack of accessibility.

- e. The issue of responsibility for damage caused to vehicles by performing the LPFET has not been sufficiently addressed.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose itself, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end. The minor repair of components damaged during an inspection may be performed at a Test-Only station as provided in subdivision (b) of Section 44014.5 of the Health and Safety Code.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

- f. ASCCA offers these alternatives to the LPFET: Implement a statewide biennial test, areas that are currently "change of ownership" would be included in the biennial Smog Check Program. Add an idle test to the enhanced mode test. Remove all Smog Check exemptions and implement waiver programs. Continue to improve the vehicle

retirement options. Tighten the vehicle emission cut points. Amend the SIP to reflect the greater potential for removal of all pollutants with the implementation of these alternatives versus the LPFET.

This comment/recommendation was rejected because:

The testing of fuel evaporative systems in order to reduce non-exhaust sources of volatile organic compound (VOC) emissions is specifically mandated by subdivision (d) of Section 44012 of the Health and Safety Code. The justification for testing of the evaporative emission system and the health impacts of evaporative emissions is well documented in the ISOR. While the alternatives proposed could potentially result in additional reductions of motor vehicle exhaust emissions, they will not result in the reduction of evaporative emissions in an amount sufficient to substitute these alternatives for the proposed LPFET. These alternatives do not meet the statutory requirements or the SIP requirement pertaining to LPFET.

6. Barry Wallerstein, South Coast Air Quality Management District

- a. The South Coast Air Quality Management District supports the Bureau's implementation of the LPFET for model year 1976 through 1995 vehicles. The Bureau and ARB have demonstrated that the proposed methodology is technically feasible, cost effective and practical as an additional component of the Smog Check Program.

Given the fact that mobile sources are the largest source of pollution in our region, as well as the fact that the South Coast Air Basin experiences the worst air quality in the country, we urge the Bureau to initiate full implementation of LPFET as expeditiously as practicable. The hydrocarbon emissions reduction from LPFET emissions testing in the South Coast Region is approximately 4 tons per day, and this emission control method is a critical component of our overall strategy to reach healthful air quality in the region.

We understand that the Smog Check industry has been objecting to LPFET emissions testing based on the additional equipment costs necessary to perform this added component to the overall inspection procedure. However, since this test procedure will be universally incorporated by all Smog Check test stations, station operators will have the option to adjust Smog Check test fees in order to recuperate the initial capital investment and relatively low operating costs associated with such testing. In addition, for Smog Check stations that also perform repairs, LPFET opens up an additional avenue for cost recovery through the repair cost of vehicles that fail this test.

This expression of support for the LPFET element was accepted and considered in the adoption of the proposed action.

7. Randall Ward, California Emissions Testing Industries Association (CETIA)

- a. The California Emissions Testing Industries Association (CETIA) strongly supports the concept of LPFET. However, we strongly oppose the manner of implementation proposed by this regulatory action as set forth in California Code of Regulations section 3340.42.

The consideration of alternatives was focused simply on alternatives to testing, not testing different types of equipment associated with evaporative emissions. It didn't consider how the allocation of the testing mandate should be administered. As an alternative, the Bureau could require only Test-Only stations to purchase the LPFET equipment, given that the affected model-year vehicles are primarily directed to Test-Only stations. Test-Only stations would have been willing to pay the two or three times the additional cost associated with fewer equipment products produced because we recognize the charge of the program.

Also, given the failure rate that is predicted you would see additional business on the Test-and-Repair side, particularly GS/CAP, for the repairs associated with those failed emissions inspections.

This comment/recommendation was rejected because:

Uniform, statewide Smog Check equipment requirements have been established in order to simplify and standardize the overall Smog Check Program and to minimize motorist confusion and inconvenience. In this regard, it is important and desirable that all Smog Check stations have the capability of performing tests on all vehicles subject to the Smog Check Program. The proposed action to add the LPFET to those requirements for all Smog Check stations is consistent with this general concept. Furthermore, not all components of the current test apply equally to all model-years of vehicles. For example, on-board diagnostic (OBDII) testing is required only on 1996 and newer model-year vehicles. When it was added in 2002, all stations were required to purchase diagnostic devices and upgrade their Smog Check test equipment. The majority of those stations chose to continue their participation in the Smog Check Program.

It is not completely clear what is meant by the recommendation to only require Test-Only stations to purchase the LPFET equipment. If this means that the LPFET would only be performed at Test-Only stations with no change in the number of vehicles directed or method of directing vehicles, those '95 and older model-year vehicles that are *not* directed may not receive a LPFET. The only vehicles that could be assured of receiving the test would be the Test-Only directed vehicles of the affected model-years. If, on the other hand, this recommendation is based on the assumption that all '95 and older model-year vehicles would be directed to Test-Only stations, it would exceed the requirements of the program. In order to comply with the requirements of Section 44010.5(b)(1) of the Health and Safety Code, it is currently not necessary to direct any more vehicles to Test-Only stations than are already being directed.

Furthermore, the direction of vehicles is not specifically addressed or even contemplated in this element of the proposed action.

In addition, this recommendation could create more inconvenience and confusion for motorists who own vehicles of the affected model-years. If the LPFET is required to be performed on all '95 and older model-year vehicles, but only certain Smog Check stations were required to have the testing equipment, those affected motorists would be limited in their choice of Smog Check stations. This could lead to the creation of multiple Smog Check station sub-classifications, making it even more difficult for consumers to know where to take their vehicles when tests and/or repairs are required. A consumer with a pre-1996 vehicle might have to contact or visit a number of Smog Check stations before finding one that would be capable of testing their vehicle. This would be unnecessarily burdensome and complicated.

There is also the issue of successful repairs to a vehicle that fails the LPFET. If Test-Only stations were the only stations required to have the LPFET equipment, how would Test-and-Repair stations be able to verify the success of their repairs on vehicles that fail? The Test-and-Repair stations would either have to purchase the same LPFET equipment, or vehicles that fail the test would have to be returned to a Test-Only station to verify the success of the repair. This could defeat the purpose and intent of the GS Program and lead to more "ping ponging" of vehicles between Test-Only and Test-and-Repair stations.

The issue of additional repair business is actually favorable to the general requirement of the proposed action that Test-and-Repair stations also participate in LPFET. That additional business will help Test-and-Repair stations recover the cost of the new equipment. However, additional repair business is irrelevant to this comment and recommendation in particular. Additional repair business could be generated from LPFET failures regardless of whether the failure occurs at a Test-Only station or at a Test-and-Repair station. In either case, only the latter may perform the repairs.

Finally, for all of the foregoing reasons, this recommendation would also add unnecessary and burdensome complications to the administration of the Smog Check Program with no programmatic benefit.

[See also Section I., comment 4. a., above.]

- b. We do not believe the Bureau has provided the necessary economic support analysis to defend the impact of the proposed regulation on small businesses. If the Bureau had conducted workshops prior to drafting these regulations, it is likely the LPFET component of the regulations would have been embraced in large measure by the industry and an effective program could have been implemented.

There are currently a total of approximately 6,000 Test-and-Repair and GS stations. About two thirds of the Test-and-Repair stations in existence test fewer than 25 vehicles a month in the vintage '95 or older. The proposed regulations estimate that

the price of an inspection will increase by \$7.50. If half of that amount is labor and the other half is the cost of amortization of equipment, the equipment payoff for most Test-and-Repair stations exceeds 5 years. This proposed action is likely to result in a substantial number of Test-and-Repair stations no longer being licensed for smog inspection.

This comment/recommendation was rejected because:

First, workshops were held in April 2006 to discuss the LPFET proposal with industry and to receive input from those who would be affected. ARB and the Bureau jointly conducted three workshops; one in Sacramento, one in El Monte and one in Pleasanton. In fact, according to the sign-in sheet, Mr. Ward represented CETIA at the April 4, 2006 Sacramento workshop. All of the information obtained in those workshops was thoroughly reviewed and considered in the development of the LPFET proposal. The Bureau even went so far as to extract from the extensive record the 50 most common and significant questions, develop answers to those questions, and post the questions and answers on the Bureau's Web site.

Second, the equipment cost estimates that were provided in the ISOR were based on good faith estimates obtained from the equipment manufactures that have already submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded to date. The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

- c. We believe the Bureau has not demonstrated any potential air quality benefit resulting from the addition of LPFET to the Smog Check Program. Therefore, we respectfully request the Bureau take immediate steps to halt this proposed regulatory action and meet with the impacted businesses on options to introduce the evaporative emissions testing in the Smog Check Program.

This comment/recommendation was rejected because:

In fact, the ISOR for this component of the proposed action does include specific reference to the anticipated air quality as well as related health benefits of adding the LPFET to the Smog Check test procedures. Furthermore, this component of the regulatory proposal will implement a recommendation made by ARB. In its November 29, 2005 report, *Environmental Impacts of Implementing a Low Pressure Evaporative Test in the California Smog Check Program*, ARB determined that adding a LPFET to the existing Smog Check inspection would be a cost-effective emissions reduction strategy. The report also determined that the addition of this test would help California meet its clean air goals and improve the health of its citizens. It is also noted that health benefits and emissions reductions were extensively discussed during the LPFET workshops conducted in April 2006.

Harmful hydrocarbon emissions can evaporate into the atmosphere as a result of malfunctions of the vehicle's fuel cap, fuel tank, vapor lines, fuel intake and charcoal canister. While evaporative emission controls are very effective in minimizing these emissions, these systems do deteriorate over time and leaks may occur. According to ARB, evaporative emissions will represent over one-half of the total hydrocarbon emissions from the 1976 to 1995 model-year light-duty vehicles by 2010. That is more than from the exhaust pipe emissions of these vehicles. Specifically, ARB estimates that 140 tons per day (tpd) of hydrocarbons will evaporate from 1976 to 1995 model-year vehicles in 2010. Of that, about 42 tpd results from deteriorating fuel evaporative emission control systems. In its report, ARB estimates that the addition of the low-pressure fuel evaporative test will reduce hydrocarbon emissions by 14 tpd in 2010. That is one-third of the 42 tons of evaporative emissions resulting from the deterioration of fuel evaporative emission control systems. In addition, ARB estimates that the projected reductions would cost \$6,688 per ton in 2010, well under their threshold of \$14,300 established for other reduction programs, making this a cost-effective emission reduction.

The health affects of air pollution have been well documented. At greatest risk are children, the elderly, and those with heart and lung diseases. The effects from short-term exposure to ozone include hospital admissions for respiratory causes, emergency-room visits for asthma, minor restricted activity days, acute respiratory symptoms, exacerbation of asthma, and premature mortality. These facts have been documented by the National Research Council and the U.S. Environmental Protection Agency. There is more limited evidence that long-term exposure to ozone may result in new cases of asthma and premature mortality. In addition, the statewide cancer risk from certain air toxins remains unacceptably high.

Pollutants of concern include ozone (or smog), particles, and toxic air pollutants. Ozone is formed from the interaction of hydrocarbons (HC) and oxides of nitrogen (NOx) in the presence of sunlight; both of which are emitted from motor vehicles. The toxins emitted from motor vehicles include benzene, which is a constituent of

gasoline. The proposed LPFET will reduce both the hydrocarbon precursors to ozone and the toxic compounds from motor vehicle fuel evaporation.

8. Christopher Walker, Law Offices of Nossaman, Guthner, Knox & Elliott, LLP, on behalf of the California Automotive Business Coalition (CalABC)

- a. The air quality benefits of this proposal are clear. In addition to the 14 tons per day of hydrocarbon emissions attributed to the “Low Pressure Evaporative Emissions Testing and Repairs,” many more tons of hydrocarbon, oxides of nitrogen and carbon monoxide emissions will also be further reduced by the performance based “GS” portion of the proposed regulation.

This expression of support was accepted and considered in the adoption of the proposed action.

9. Judith Lamare, Acting Chair, and Rocky Carlisle, Executive Officer, California Inspection & Maintenance Review Committee

- a. At its February 27, 2007 meeting, the California Inspection and Maintenance Review Committee (IMRC) approved a resolution to support the LPFET regulations recently filed with the Office of Administrative Law. IMRC strongly supports the reduction of evaporative emissions from older model-year vehicles because the 14 tons per day reduction in hydrocarbon emissions is significant. It’s been done successfully in other states.

This expression of support was accepted and considered in the adoption of the proposed action.

10. Carl Nord, Vice President, Environmental Systems Products Holdings Incorporated (ESP)

- a. Environmental Systems Products Holdings Incorporated (ESP) supports the approval of the proposed regulation adding the LPFET to the Smog Check inspection for model year 1976 through 1995 vehicles. ARB estimates that the addition of this test will reduce hydrocarbon emissions by 14 tons per day in 2010 and provide additional benefits to the environment by reducing benzene and other hydrocarbons.

ESP has been working with the Bureau and ARB since 2002 to develop a California specific evaporative tester. In November 2005, ARB reported the equipment functioned properly and urged to implement the LPFET, as they believed the test would provide cost effective emissions reductions. This technology has been developed, tested and subjected to scientific scrutiny over the past 5 years. We

applaud the state of California for the efforts in this area and urge the swift adoption of these regulations.

This expression of support was accepted and considered in the adoption of the proposed action.

11. Michael Kozlowski, Senior Vice President, ESP, Inc.

- a. During the March 9, 2007 public hearing regarding the proposed LPFET regulations, a representative of the California Motor Car Dealers Association suggested that any station that certifies they will not test pre-1995 vehicles be allowed to be exempt from the requirement to purchase the LPFET equipment. We urge the Bureau not to allow stations to be exempt from performing the LPFET as it would cause inconvenience to consumers in determining which stations perform the LPFET and ultimately lead to criticism of the Program by consumers.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. ESP has provided proprietary data showing how the price of the LPFET will substantially increase as the volume of expected sales decreases. Given the industry concerns about the cost figures based on all licensed stations purchasing the LPFET, the impact on the price if the market size is decreased should be carefully considered.

This comment/recommendation was accepted and considered in the adoption of the proposed action, as follows:

The equipment cost estimates in the ISOR were provided based on good faith estimates provided by the two manufacturers of the potential systems. This equipment manufacturer is advising that the cost estimates provided may be different when the regulation is adopted and the cost will be dependent on potential demand. However, this proposed regulatory action does not pertain to cost of the equipment and historically, the Bureau has not specified costs for any test equipment in any regulatory action.

12. Manuel Babudjian, Smog One Test-only

- a. Most of these cars that will be subject to the LPFET have canisters that are inside the fenders. It's going to be very difficult to pressurize the system and perform the test on these cars.

This comment/recommendation was rejected because:

As discussed in ARB's November 29, 2005 report, from the results of the Bureau's 2005 roadside testing, it was determined that almost 92% of the affected fleet ('95

and older model-year vehicles) would be testable. The only vehicles that will be excluded from LPFET will be the '96 and newer model year vehicles with OBD II self-testing capabilities, and those older vehicles that have evaporative emissions control systems that cannot be tested due to their configuration or lack of accessibility.

- d. The cars that are going to be tested are between model-years 1976 and 1995. They will have old brittle hoses that will break when they are crimped. If we crimp a hose and it breaks, what are we going to tell the customer? The car comes in with all the hoses attached and if we crimp it and it breaks, we can't do any repairs because we are a Test-Only station. The customer is going to complain to the Bureau and then we're going to have a rep come to us and talk to us about it.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose itself, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end. The minor repair of components damaged during an inspection may be performed at a Test-Only station as provided in subdivision (b) of Section 44014.5 of the Health and Safety Code.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

- e. How do we know that the LPFET equipment is going to work? What if we pressurize the fuel tank and we have an overflow of fuel? What if the machine malfunctions?

There may be a hot muffler right underneath the gas tank and there is a risk of fire. What about the health risk to technicians from inhaling vapors leaking from a pressurized gas tank?

This comment/recommendation was rejected because:

In addition to extensive roadside pullover testing, the Bureau performs extensive laboratory certification testing on equipment before it is approved for sale to Smog Check stations. Part of certification testing will include Beta testing in stations for many weeks. The LPFET specifications incorporated into regulation also require Underwriters Laboratory (UL) certification of the equipment before submission to the Bureau for certification testing. In addition, LPFET equipment manufacturers will also provide safety information in their LPFET operations manuals.

- f. If you want to reduce emissions, why can't we smog the some of these older cars every year instead of every two years? Most of these cars get repaired now with after-market catalytic converters. Three months later, the catalytic converter is no good and the car is polluting again until its next Smog Check.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The annual testing of older vehicles and repair durability are not the subject of the proposed action.

- g. When they changed the law to exempt cars six model-years old from Smog Check, that affected our business too – by a lot. Two model-years worth of cars makes a huge difference based on how much money we invested in the business. And then there's all the competition from all those stations that are newly opening in an area. There's not a limit on the amount of shops in an area. They're not regulating how many Test-Only stations you can put in one area or how many Test-and-Repair stations can be in one area.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed action is not related to the exemption of vehicles from the Smog Check Program in general, nor to the number of stations that may be located in a given geographical region.

- h. I also have an issue with the Smog Check license. Some people just memorize a book, get a Smog Check license and open up a station and they have no automotive experience. They end up opening shops and killing our business. We've got to watch out for that too.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The licensing of Smog Check stations and technicians is not included in the proposed action.

13. Gene Morrill, Certified Auto Specialists

- a. I'm opposed to the LPFET proposal. There aren't that many cars on the road to test. I understand you need to meet SIP requirements and certain regulations, but I think there are better ways to do that without beating us up over breaking hoses. The majority of leaks we see on evap are in the fuel tank. It's going to require most cars to have their fuel tanks dropped at great expense to the customer. I know you have said that parts are readily available, but it's still an inconvenience to customers to be waiting for days and days for some of these older cars that we find.

This comment/recommendation was rejected because:

ARB estimates that in 2010 there will be 5,783,020 vehicles in the affected model-year group that will be subject to the proposed LPFET. Since these older model-year vehicles eventually wear out, it is anticipated that the fleet subject to this inspection in 2017 will diminish to 3,020,136 and the number of overall failures will drop, but testing is estimated to result in 7.3 tpd of hydrocarbon emission reductions.

As stated in the ISOR, ARB found that most of the repairs to vehicles failing the LPFET would involve replacement of hoses and tubing, rather than repairs to the fuel tank. Regardless, fuel tank repair is not something new to the automotive repair industry. Leaking fuel tanks are routinely repaired in automotive repair shops throughout the state now. The adoption and implementation of LPFET will not impact the issues raised in this comment. These same concerns exist anytime repairs are performed involving fuel or fuel tanks.

- b. The stand-alone system, I think, is crap because the current EIS machines are already overloaded with junk. You shouldn't keep trying to add stuff on. The technology is old, the machines are breaking, and the maintenance contracts are horribly expensive.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The status of the current EIS machine or Smog Check test equipment is not the subject of this proposed regulation. The specifications (incorporated by reference) for the LPFET require the design of the tester to be such that it can be incorporated into the current EIS machine. Incorporation was not sought at this time due to the additional cost to stations for an EIS update that would be added to the cost of LPFET and the concern that updating the current 10-year-old EIS machine would not be

accomplished per ARB's request of the Bureau to implement LPFET as expeditiously as practicable. It is noted that this comment contradicts the previous comment expressing a desire to invest in the new equipment.

14. Tom Dotts, High Tech Auto

- a. The Bureau has stated that the cost of the LPFET machine is going to be under \$3,000. I've heard from other manufacturer representatives that it's going to exceed that amount when the machine actually gets to the consumer. I'm concerned with that.

This comment/recommendation was rejected because:

The equipment cost estimates that were provided in the ISOR were based on good faith estimates obtained from the equipment manufactures that have already submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded to date. Without knowing whom the "other manufacture" was, or in what context their statement was made, it is impossible to provide a more detailed response to this comment. It could be, for example, that the statement was made with respect to a reduced demand for equipment due to speculation that vast numbers of Smog Check stations would drop out of the Program.

- b. The other thing I'm concerned about with the LPFET is the issue of cracked hoses. That's going to be a problem.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard

indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose it self, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end. The minor repair of components damaged during an inspection may be performed at a Test-Only station as provided in subdivision (b) of Section 44014.5 of the Health and Safety Code.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

- c. With all the CAP repair assistance money that is going to the GS stations, maybe some of that money could be handed out to all the Smog Check stations to help them purchase this new equipment that Bureau wants us to use.

This comment/recommendation was rejected because:

This recommendation is not permitted under current law. Section 44062.1 of the Health and Safety Code establishes the repair assistance program and specifies that it will be funded by the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section 44091. Repair assistance includes re-testing costs and the costs of repairs to remedy violations of Sections 21753 or 27153.3 of the Vehicle code. It does not authorize the use of funds for the purchase of new equipment for Smog Check stations.

Furthermore, the use of CAP funds, or any other state funds, for the purpose suggested by this recommendation would be unconstitutional. Section 6 of Article XVI of the California Constitution provides, in pertinent part, that “The Legislature shall have no power to ... make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever...” For the State of California in general, or the Bureau in particular to purchase LPFET equipment and give them to privately operated licensed Smog Check stations would constitute a gift of “public money or thing of value,” within the meaning of section 6. In addition, the state cannot buy the LPFET equipment and give them to Smog Check stations, even if the state retained title to the equipment and only loans them to stations, because section 6 also prohibits loans.

- d. The Bureau also stated the LPFET would only add an estimated \$7.00 to the cost of the Smog Check inspection. I’ve looked at the numbers and I don’t know if I agree with that estimate or not. Is that \$7.00 for each car that you have to do the LPFET on or is that \$7.00 that you’re adding to every single car that comes through your shop? When you add up the number of cars that you do in an entire day, the amount of time

that you're going to lose for each of those older cars, do those numbers add up at the end of the day's ticket? Are you still going to be making the same amount of money?

This comment/recommendation was rejected because:

The Bureau acknowledged in the ISOR that consumer costs would likely increase, but there would be benefits from improved health and reduced medical costs from better air quality.

The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

15. Jorge Manzur, Manzur Test-only

- a. It's just like the Exhaust Gas Recirculation (EGR) valve testers that cost several hundred dollars. I've used it about two times. I own six stations, so I spend \$3,600.00 for nothing.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. In an ET Blast (# 23802) dated February 5, 2004, the Bureau notified all Smog Check stations that it was acceptable to use either a bi-directional scan tool or an electronic EGR tester to perform the functional test of the EGR system. The notice states "This EGR testing tool is not required or endorsed by BAR."

16. Anthony Ortiz, ABC Test-only Centers

- a. As to the LPFET, we will abide by it because we have no choice, but it is going to affect us.

This comment/recommendation was rejected because:

It is unclear what is meant by this comment. It appears to be reluctant support, but there were no specific reasons or concerns expressed.

17. John Stevenson, Los Angeles Fire Department

- a. I work for the Los Angeles Fire Department. We have a large fleet of gasoline vehicles that have to be tested. Will L.A. City Fire be required to purchase the LPFET equipment?

This comment/recommendation was rejected because:

Vehicles owned or operated by public agencies are required, pursuant to Health and Safety Code section 44019, to obtain Smog Check inspections that would include the testing sought by this regulatory proposal. If the agency tests its own vehicle fleet, pursuant to Health and Safety Code section 44020, LPFET equipment would have to be purchased.

- b. I see the Bureau's estimates of the additional revenue per test and how to pay for the LPFET equipment, but it will be hard for an independent station to justify the cost. When a shop owner buys a piece of equipment, he's not thinking ahead two or five years, he's thinking 10 or 20 years ahead.

This comment/recommendation was rejected because:

The equipment cost estimates that were provided in the ISOR were based on good faith estimates obtained from the equipment manufactures that have already submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded to date. The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

- c. Has the LPFET test been changed to a dynamic or functional test, proving the system's ability to purge? Previously, the test procedure was described included pressurizing the line only to the gas tank, which may not detect a leak, but the canister may be full of gas because it's not functioning. The LPFET should include a functional test to determine if it is capable of purging itself.

This comment/recommendation was rejected because:

The LPFET checks for leaks between the filler neck and the canister. The ARB believes that the emission reductions from testing just this portion of the fuel evaporative system are currently adequate. The use of purge testing is not anticipated at this time.

- d. What happens when the technician drops a gas tank and spills gas? Hydrocarbons are not collected when a gas tank is left open. There is also concern about the availability of replacement gas tanks. There is a ten-year availability on dealership parts or the other option is a used gas tank, which might not be any better than the existing tank.

This comment/recommendation was rejected because:

A vehicle with a leak in the evaporative system will continually emit fuel vapors contributing more hydrocarbons over time if not repaired than would be emitted during the one time repair. As stated in the ISOR, ARB found that most of the repairs to vehicles failing the LPFET would involve replacement of hoses and tubing, rather than repairs to the fuel tank. Regardless, fuel tank repair is not something new to the automotive repair industry. Leaking fuel tanks are routinely repaired in automotive repair shops throughout the state now. The adoption and implementation of LPFET will not impact the issues raised in this comment. These same concerns exist anytime repairs are performed involving fuel or fuel tanks.

In the ARB study, there were no vehicles that could not be repaired due to parts being unavailable. However, in the rare circumstance when parts availability may be an issue, the Bureau's Parts Locator Service, available through a toll free telephone number, can provide assistance in locating hard to find replacement parts.

- e. An alternative would be to reseal the gas tank with an approved sealant. Will the Bureau approve any sealers, because I've had old gas tanks sealed with a bladder type sealer? Also, procedures for welding gas tanks should be provided to technicians.

This comment/recommendation was rejected because:

Current accepted industry standards regarding repairs involving fuel or fuel tanks will adequately address these issues.

[See also Section I., comment 17. d., immediately above.]

- f. Will the Bureau approve the use of siphon pumps that do not meet the same hydrocarbon emissions standards as the vehicles? Some stations use pumps to remove the gas from the tank, which again, leaves an open container full of gas with no way to recoup those hydrocarbons.

This comment/recommendation was rejected because:

Please refer to Section I., comments 17. d. and e., immediately above.

18. Scot Davis, Quality Tune-Up

- a. I am completely against the proposed LPFET regulation. But, I will live with it if I am able to become GS certified. It doesn't make sense for Test-and-Repair shops to have the LPFET equipment because they don't test older cars. Those cars are directed to Test-Only, and will all go to GS stations if they are allowed to perform the initial test. We do not test more than three or four cars a month that are model year 1995 and older, and if I have to spend \$3,000 on equipment, it will take longer than that machine is going to be around to get my money back.

This comment/recommendation was rejected because:

A uniform Smog Check test statewide, regardless of subject vehicle model-year (1976 and newer) is sought to minimize motorist confusion. Not all components of the current test apply equally to all model-years of vehicles. For example, on-board diagnostic (OBDII) testing is required only on 1996 and newer model year vehicles. When it was added in 2002, all stations were required to purchase diagnostic devices and upgrade Smog Check test equipment. The majority of stations chose to continue their participation in the Smog Check program.

This recommendation, if accepted, would create multiple Smog Check station classifications making it even more difficult for consumers to know where to take their vehicles when tests and/or repairs are required. A consumer with a pre-1996 vehicle might have to contact or visit a number of Smog Check stations before finding one that would be capable of testing their vehicle. This would be unnecessarily burdensome and complicated.

- b. I understand we have to implement LPFET testing, but a lot of things need to be examined when dealing with gas tanks and working with fuel lines. There are safety issues and consumer complaint issues when crimping off old hoses.

This comment/recommendation was rejected because:

As stated in the ISOR, ARB found that most of the repairs to vehicles failing the LPFET would involve replacement of hoses and tubing, rather than repairs to the fuel tank. Regardless, fuel tank repair is not something new to the automotive repair

industry. Leaking fuel tanks are routinely repaired in automotive repair shops throughout the state now. The adoption and implementation of LPFET will not impacted the issues raised in this comment. These same concerns exist anytime repairs are performed involving fuel or fuel tanks. However, the LPFET equipment manufacturers will include safety information in their operating manuals.

19. Eddie Reinsma, R and S Automotive

- a. The proposed LPFET will be a big problem for older cars with brittle lines. The Bureau needs to address customer awareness of this new procedure, and the possibility that crimping of lines may cause breakage. If a nipple snaps on a canister, we should not be required to replace it because we have been given specific test procedures to follow. The Bureau could require that older cars with high mileage, as determined to the Bureau, must replace the canister and lines along with the LPFET test. It is well known that over time the lines get brittle and will break if the gas tank has to be removed.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose it self, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end. The minor repair of components damaged during an inspection may be performed at a Test-Only station as provided in subdivision (b) of Section 44014.5 of the Health and Safety Code.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any

necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

- b. I think better training should be available. Two of my mechanics attended the last update class and said it was a joke, because they couldn't understand the instructor and he only covered half of the material in the book.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed action does not make any change to the existing licensing criteria for Test-Only stations or technicians employed by Test-Only stations. Currently, licensing by the state is required for any technician that performs tests and/or repairs for the purpose of certifying vehicles in California's Smog Check Program. This means that all licensed Smog Check technicians statewide must possess the same minimum amount of training and experience, and pass the same examination in order to obtain a license.

20. Mike Neldon, Valley Smog Test

- a. As to LPFET, I have mixed feelings, but I do agree with the comments that express concern about safety issues. Some of these old cars will require numerous repairs that even \$500.00 in CAP repair assistance will not cover. I'm not sure that the possible danger of the LPFET mentioned here today would outweigh the emission reductions it will achieve.

This comment/recommendation was rejected because:

As stated in the ISOR, ARB found that most of the repairs to vehicles failing the LPFET would involve replacement of hoses and tubing, rather than repairs to the fuel tank. Regardless, fuel tank repair is not something new to the automotive repair industry. Leaking fuel tanks are routinely repaired in automotive repair shops throughout the state now. The adoption and implementation of LPFET will not impact the issues raised in this comment. These same concerns exist anytime repairs are performed involving fuel or fuel tanks.

21. Christopher Irons, Smogs Unlimited.

- a. The proposed LPFET regulation projects an annual cost of \$6,700 per ton as of 2010. This regulation is supposed to take effect in November 2007, with an average price of \$2,700 to purchase the LPFET tester. 8,000 shops will be required to buy the tester in order to comply with the regulation, which means over 20 million dollars invested for just that piece of equipment. This seems excessive for only 14 tons of emissions per day when deteriorating emission devices cause 140 tons.

This comment/recommendation was rejected because:

As stated in the ISOR, this regulatory proposal is designed to increase emission reductions achieved through compliance with the Smog Check program and to ensure continued program compliance by consumers and the Smog Check industry. Improving air quality is essential to the healthy of all Californian's especially those at greatest risk -- senior citizens, the infirm, and children.

The equipment cost estimates that were provided in the ISOR were based on good faith estimates obtained from the equipment manufactures that have already submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded to date. The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

22. Larry Nobriga, Salel Auto Service.

- a. I am a Test-and-Repair station owner in San Leandro and also represent the Automotive Services Councils of California. I oppose the LPFET regulation for a few reasons. First, the fiscal impact on the stations required to buy the tester at an estimated cost of \$3,000 with no guarantee of any return on that investment. My station has experienced a decline in the number of initial smog tests performed, and the number of older vehicles repaired. Raising the price of a smog check by \$7.50 will not pay for this equipment in five years. If I don't see a return on the investment in new LPFET equipment, I'm not sure I want to remain in the program.

This comment/recommendation was rejected because:

The equipment cost estimates that were provided in the ISOR were based on good faith estimates obtained from the equipment manufactures that have already submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded

to date. The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

Each Smog Check station operator must decide whether to purchase the equipment and remain in the Smog Check Program, or to leave the Program. These are business decision that would have to be made by each business operator, based on his or her individual needs and/or preferences.

- b. I think that you're going to have a loss of Smog Check stations that's going to be substantial which will impact the consumer and the cost is going to go up for the consumer for Smog Check. They aren't going to have the choice they've got now to take it pretty much where they want and that's going to impact.

This comment/recommendation was rejected because:

The Bureau acknowledged in the ISOR that consumer costs would likely increase, but there would be benefits from improved health and reduced medical costs from better air quality.

The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

It has been the Bureau's experience in the past, that when major changes in the Program are made – such as requiring stations in all non-enhanced areas to upgrade their emissions analyzers to the BAR-97 EIS platform at a cost of between \$15,000 and \$18,000 – there has been no significant change in overall station population among the affected stations. That is not to say that some stations will not choose to leave the Program, but rather that the normal influx of new stations coming into the Program will offset those losses and station population will stabilize relatively quickly.

- c. I think the vehicle retirement programs, which will take even more smog check inspections and repairs from us have been improving tremendously. The San Joaquin Valley Air District wants to retire another 30,000 vehicles.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Fewer than 20,000 vehicles participate in the Bureau's Vehicle Retirement Program annually. This is a small fraction of the 9.2 million vehicles tested yearly and would not change the estimates set forth in the ISOR.

- d. Another problem is exemptions; it seems to be the Bureau is planning to exempt 20 to 40 percent of the fleet that we are able to test. The exemption of vehicles with dual fuel tanks that are both operational will include a large number of light trucks, motor homes, and heavy trucks, along with the exemption of any vehicles in which no fuel tank adapter is available

This comment/recommendation was rejected because:

As discussed in ARB's November 29, 2005 report, from the results of the Bureau's 2005 roadside testing, it was determined that almost 92% of the affected fleet ('95 and older model-year vehicles) would be testable. The only vehicles that will be excluded from LPFET will be the '96 and newer model year vehicles with OBD II self-testing capabilities, and those older vehicles that have evaporative emissions control systems that cannot be tested due to their configuration or lack of accessibility. These limited exemptions are specified in paragraph (1) of subsection (c) of Section 3340.42.

23. Bud Rice, Quality Tune-Up.

- a. An issue I want to mention is relative to LPFET and hose breakage. Rocky Carlisle who is with the IMRC has said on numerous occasions that in their testing, they did not experience hose breakage. However, I am concerned that in the real world with technicians testing cars, there may be some breakage and there is a question of who is responsible when cars come in running fine and end up with breakage from the test procedure.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose itself, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end, and could probably be repaired rather quickly and easily.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

24. Richard Masef, Vallejo Smog Test-Only.

- a. I oppose the proposed LPFET regulations. There will be fuel line breakage caused by the LPFET. In the list of questions compiled from the LPFET workshops, page 3, question 27 reads “do I have to test this vehicle if the vehicle fails a visual evaporative check?” The answer is “No”. In my experience if the fuel evaporative canister is broken or defective, and we enter “F” for failed then we are not required to do the LPFET test. When the car is re-tested after repair, it will still fail due to leaks in the evaporative system. Also, Question 32 asks how many hoses were broken as a result of this test. In my experience, most owners of older cars will avoid roadside checkpoints.

This comment/recommendation was rejected because:

Some vehicles may require multiple inspections to repair a vehicle that fails for a

visual then a functional evaporative system reason. When performing any evaporative system repair, the LPFET should be performed in order to verify the success of the repair and to confirm the performance of the entire evaporative system before the vehicle is retested. Proposed subsection (c)(2)(A) of Section 3340.42 states that if components related to the vehicle's fuel evaporative system are found to be missing, modified, or disconnected during the visual inspection, "F" (for fail) is to be entered instead of proceeding with the functional test. The reason is that if part of the fuel evaporative system being tested pursuant to the LPFET is missing, modified or disconnected, a substantial leak will be present and the vehicle will fail the LPFET. Once the related components are returned to a proper state, the LPFET should be performed. For the purpose of this test, the fuel evaporative canister would not be considered a component related to the vehicle's fuel evaporative system. The questions compiled from the LPFET workshops, and subsequent responses, were developed before the proposed LPFET regulatory package. Once the proposed regulation is adopted the Bureau plans to review the responses provided to the workshop questions for conformance.

The comment also suggests that the low incidence of hose breakage observed during roadside testing may be a result of older cars not being well represented. The random roadside inspections accurately represent California's fleet subject to smog check. Out of the 1,500 vehicles the Bureau tested, only three experienced any test-related damage such as a crushed hose. In order to ensure that the sample population was representative, special selection criteria were used to retain older cars for the test, while newer cars were turned away. For this reason it is expected that the very low broken hose failure rate from roadsides should approximate the real world. Nevertheless, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end, and could probably be repaired rather quickly and easily. A Test-Only station would be allowed to make this repair, pursuant to subdivision (b) of Section 44014.5 of the Health and Safety Code, because the damage occurred as a result of the test.

- b. Question 39 asks what will prevent fraud. This type of procedure, as with any functional test, is where the most fraud occurs. The Bureau has enforcement programs and undercover cars to detect where fraud is occurring, but as always a small percentage of stations is causing all of the problems.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's ability to enforce against illegal activity, including non-compliance with this regulatory proposal, will not change upon the adoption of this proposal.

- c. I just finished my '07 update training and it was distressing not to see the LPFET included in the training. I doubt the manufacturers will train us or that the ET hotline will be helpful.

This comment/recommendation was rejected because:

The update training for technicians does not include LPFET because authority to perform the test has not yet been adopted by regulation. Equipment manufacturers have indicated that they will be providing equipment-specific training instruction by way of an operational manual and toll-free telephone support. The Bureau will continue to provide stations with assistance in performing all aspects of the Smog Check test through its help desk, this would include assistance with the LPFET when implemented.

25. Stephen Small, Chabot College & ASCCA

- a. A lot of stations are not required to have lifting devices and on some vehicles the only canister access available is from underneath; either front, middle, or rear. Some stations that don't have lifting equipment would not be required to perform the LPFET and mark the vehicle exempt. This will further reduce the number of vehicles that receive the complete LPFET.

This comment/recommendation was rejected because:

This comment is addressed by this regulatory action that adds Section 3340.42(c)(1)(F). This section exempts from the LPFET vehicles with a fuel evaporative canister and fuel vapor hoses that are not accessible or would require the partial dismantling of the vehicle in order to gain access to them for testing. Therefore, a canister would not be considered accessible if the use of a lift were the only way to access the canister. Many vehicles are testable even if the canister is not accessible because the line leading to the canister can be crimped for the test. Roadside testing would still correctly represent the number testable, as they did not lift the vehicles.

26. Richard Reeves, Acutech Auto.

- a. I am opposed to the proposed LPFET because I believe that any breakage that occurs during a smog inspection is one too many.

This comment/recommendation was rejected because:

As stated in the ISOR, the Bureau and ARB have worked together to assure the successful implementation of LPFET by examining several factors, including accurate testing technology for use in California that would minimize damage during the test procedure. ARB has reported that the test equipment functioned properly by evidence of a low rate of false failures on shed-tested vehicles. In addition, roadside testing performed by the Bureau in 2005 found an almost nonexistent rate of damage from the performance of the LPFET. Out of the 1,500 vehicles the Bureau tested,

only three experienced any test-related damage. All of that damage consisted of crushed hoses.

The vehicles subject to the LPFET are mostly older vehicles. Components of the evaporative emissions control systems will certainly degrade and deteriorate over time, but that is precisely why the LPFET is an important part of the Smog Check test regimen. If the performance of the proposed minimally invasive test causes a hose to be cracked, crushed or otherwise damaged, that could be a reasonable indication that the hose needed to be replaced in the first place. While the Bureau has no standard indicating when such hoses should be replaced or repaired, there are common-sense indications such as the appearance of the hose itself, including splits, cracks and signs of wear and brittleness. In addition, any damage caused by the testing procedure would be limited to a very small area of a hose, usually very close to an end. The minor repair of components damaged during an inspection may be performed at a Test-Only station as provided in subdivision (b) of Section 44014.5 of the Health and Safety Code.

Clearly, if any damage to a vehicle or any part of a vehicle were caused by the improper or negligent performance of the LPFET, or any other procedure for that matter, the Smog Check station and technician would most likely be liable for any necessary repairs. However, that would be a separate issue not specifically related to the proposed action.

27. Tiffany Moore, A Smog Test-Only, Inc.

- a. I oppose the LPFET test for all of the reasons that have already been stated.

This comment/recommendation was rejected because:

This is a general, nonspecific objection. Please refer to the responses to all the other objections to the LPFET proposal.

- b. I think most of the people in this room would agree that your figures on emission reduction as well as cost incurred by all of us affected by LPFET are going to be much higher than your initial estimates. You say \$2,500; we see a bill for \$4,000. That's what it comes down to, our prices are going to go up and who suffers? The consumer suffers.

This comment/recommendation was rejected because:

The equipment cost estimates that were provided in the ISOR were based on good faith estimates obtained from the equipment manufactures that have already submitted equipment to the Bureau for certification testing. All the other equipment manufactures known to the Bureau were informed of the opportunity to construct and submit LPFET equipment for certification. Only two manufactures have responded

to date. The estimate of the possible increase in the test cost resulting from this element of the proposed action was taken from the report prepared by ARB, *Environmental Impacts of Implementing a Low Pressure Fuel Evaporative Test in the California Smog Check Program*, November 29, 2005. ARB based these projections on an estimated equipment cost of between \$2,500 and \$3,000 amortized over five years. A \$3,000 LPFET could be paid off in five years if an additional \$1.50 per test were charged for 2 tests per day with 200 workdays per year. The remainder of the estimated overall increase was associated with the additional test time (labor) which the Bureau had estimated to be about five minutes. Using the current prevailing labor rate, which ARB determined to be \$72.00 per hour, it was estimated that the additional test time would add another \$6.00 to the Smog Check inspection cost, bringing the total to the \$7.50 estimate included in the ISOR. Obviously, these are only estimated averages and the actual impact to a specific business or group of businesses would depend on the individual circumstances of each operation.

- h. Has anyone taken into consideration that the Bay Area has only been in this new program for less than three and a half years? There has not been enough time to evaluate that impact, not only to the Bay Area air quality but also that that air flows into the valley and affects the foothills as well. A lot more investigation needs to be done.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The addition of enhanced testing and direction of vehicles in the Smog Check program operated in the Bay Area Air Quality Management District ("Bay Area") was implemented through legislation in 2003 and is not part of this regulatory proposal. As indicated in the ISOR, LPFET testing is sought to reduce evaporative hydrocarbon emissions that occur separately and would be in addition to the exhaust emissions that are being reduced as a result of the 2003 enhancement in the Bay Area. However, LPFET will be implemented in all Smog Check Program areas; i.e., enhanced, basic, and change of ownership areas. The benefits derived from LPFET will apply to all of those areas proportionately.

28. Ben Rue, CA Test-Only Center.

- a. I want to address the LPFET regulations first. Of course we need them. It's mandated by the USEPA. It's all part of the Smog Check Program.

This expression of support for the LPFET was accepted and considered in the adoption of the proposed action.

29. Cary A. Biggert, Pro Auto.

- a. I am opposed to the LPFET program. I test mostly newer vehicles so the chance of ever being able to use the LPFET testing equipment on any car under the current program is almost nonexistent. There needs to be exceptions to this rule because not everybody fits in the same category.

This comment/recommendation was rejected because:

A uniform Smog Check test statewide, regardless of subject vehicle model-year (1976 and newer) is sought to minimize motorist confusion. Not all components of the current test apply equally to all model-years of vehicles. For example, on-board diagnostic (OBDII) testing is required only on 1996 and newer model year vehicles. When it was added in 2002, all stations were required to purchase diagnostic devices and upgrade Smog Check test equipment. The majority of stations chose to continue their participation in the Smog Check program.

This recommendation, if accepted, would create multiple Smog Check station classifications making it even more difficult for consumers to know where to take their vehicles when tests and/or repairs are required. A consumer with a pre-1996 vehicle might have to contact or visit a number of Smog Check stations before finding one that would be capable of testing their vehicle. This would be unnecessarily burdensome and complicated.

- b. I'm opposed to the LPFET equipment because it doesn't test the complete system. Of the '96 and '97 vehicles that are listed under OBD II and their monitoring systems, few actually have an evaporative emissions test in their monitoring system, so two model years of these vehicles are not subject to the LPFET test.

This comment/recommendation was rejected because:

The LPFET checks for leaks between the filler neck and the canister. The ARB believes that the emission reductions from testing just this portion of the fuel evaporative system are currently adequate.

The Proposed LPFET Regulation states in part that 1996 and newer model-year vehicles equipped with a Series II On-Board Diagnostic (OBD II) system with the capability to perform a self-diagnosis of the vehicle's fuel evaporative system are exempt from the LPFET test. This would allow for the LPFET testing of any model-year vehicles not equipped with an OBD II system capable of self-diagnosis of the fuel evaporative system – even the 1996 and 1997 vehicles referred to in this comment.

30. Mike Cherry, Cherry Pit.

- a. The proposed LPFET test is not a complete test; it only tests a portion of the evaporative system. All it tests is the ability of the system to accumulate the vapors. It does not test the ability of the system to purge the vapors. Although the system can contain the vapors that doesn't mean it is actually working. This test will not capture all of the evaporative emissions problems that exist.

This comment/recommendation was rejected because:

The low-pressure fuel evaporative test checks for leaks between the filler neck and the canister. The ARB believes that the emission reductions from testing just this portion of the fuel evaporative system are currently adequate. The use of purge testing is not anticipated at this time.

- b. Some of the issues brought up by the Inspection Review Committee suggested some alternatives for reducing emissions. One was to address the issue of program avoidance and I can give you some personal testimony on that. I own a Test-Only station, which includes a fast oil change service. In January, I was soliciting business, making cold calls on fleet customers and came across a little company called Clark Pest Control. It turns out they were pretty happy with where they were getting their oil changed so I asked who does their smog inspections. Well, we don't need to get our smog inspections done. We have our vehicles registered in an area that doesn't require smog inspections. So there's 50 plus vehicles in my local community. There is a lot of program avoidance, particularly in fleets. The solution would be a statewide biennial program, because if all vehicles are required to test, the vehicles will be registered under the correct address.

Another problem with avoidance is that registration fees for vehicles registered in an enhanced area include a fee which goes to the Air Quality District, so if vehicles are incorrectly registered outside of the enhanced area, no money goes to the Air Quality Districts for those vehicles.

This comment/recommendation was rejected because:

These comments are outside the scope of, and not germane to, the proposed action. Smog Check inspections are required as a condition of motor vehicle registration and action to address program avoidance would require statutory and regulatory changes with the registration renewal process, within the jurisdiction of the Department of Motor Vehicles, not the Bureau. Further, action to improve registration compliance would not serve as a substitute to LPFET. As indicated in the ISOR, LPFET testing is sought to further reduce evaporative emissions, while the Smog Check test is primarily designed to reduced exhaust emissions.

- c. Another issue the I/M Review Committee addressed was preconditioning which I think refers to false passes and false failures. One of the methods used in preconditioning was propping the throttle at 2,500 RPMs for three minutes. Of the

stations surveyed, almost 40 percent of the GS stations answered that they were throttle-propping the vehicles. This was covered in a training class, we were told that it was specifically forbidden. So you wonder why 40 percent of the vehicles fail the roadside testing. Maybe some of those vehicles were throttle propped.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. As prescribed by Section 3340.42, Smog check stations and technicians shall conduct tests and inspections in accordance with the Bureau's BAR-97 EIS Specifications or the provisions included in that section. This procedure includes when to begin the inspection to ensure that vehicles are properly warmed-up prior to testing. This regulatory action does not change any existing requirements. Furthermore, action to improve preconditioning would not serve as a substitute for LPFET. As indicated in the ISOR, LPFET testing is sought to further reduce evaporative emissions, while revising the precondition criteria for the Smog Check test is related to reducing exhaust emissions.

- d. Some of the other issues addressed by the I/M Review Committee include vehicle specific cut points which would take the good data and split it out with cut points for individual vehicles by make and model. Cut points for repairs which would be tighter for tests done after a vehicle is repaired, were also addressed.

This comment/recommendation was rejected because:

This comments is outside the scope of, and not germane to, the proposed action. A 2005 study reported that implementation of vehicle specific cutpoints will reduced exhaust emissions, but would not serve as a substituted to LPFET. An indicated in the ISOR, LPFET testing is sought to reduce non-exhaust related evaporative emissions.

- e. Another alternative that would go a long way in reducing hydrocarbons and CO is to include an idle test as part of the BAR 97 test. We can smell hydrocarbons after being around shops for awhile. You can smell the vehicles that aren't being tested. Those vehicles are probably being passed at CAP stations because there are no criteria for the test. There are vehicles running around that stink at idle, with hydrocarbons and high CO, which is part of the problem in California.

This comment/recommendation was rejected because:

This comments is outside the scope of, and not germane to, the proposed action. As indicated in the ISOR, LPFET is sought to reduce evaporative hydrocarbon emissions. The proposal that an idle test be added to the BAR-97 inspection deals with exhaust emissions, a different emission source that is not being addressed by this proposal and would not be an appropriate alternative.

- f. Another big issue is determining if vehicles are properly repaired. The Sierra Research data is not out yet, but we have heard that 40 percent of the vehicles will fail two days after they've been certified. So we need either tighter cut points or better pre-conditioning procedures to improve the Smog Check Program.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. This proposal seeks to add a functional test to the Smog Check test regimen. The issue of what happens when a vehicle is improperly repaired or the repair fails shortly after being performed is not the focus of the regulatory proposal. Further, improper testing and/or repairs are already grounds for enforcement action pursuant to existing laws and regulations.

- g. Another point I want to make is new cars are exempt from the Smog Test Program for six years. Those who live in Sacramento County are well aware of street racing; accidents and problems that have been caused by modified cars. Most of these cars are late model cars. As a safety issue California should reconsider the exemption of new vehicles for six years. Putting these new cars back into the program may be a way to cut down on street racing and modified cars.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Vehicles are subject to the biennial Smog Check requirement pursuant to Health and Safety Code Section 44011 and Vehicle Code section 4000.3. The recommendation that the exemption for six year old and newer vehicles be repealed requires a change to existing statute and is not addressed by this regulatory action.

31. Keith Bryant, Santa Clara County Test-Only

- a. I believe that instituting a 30 second or 45 second idle speed portion to the BAR 97 test on the affected vehicles, model years '76 through '95, would be more advantageous and beneficial. I can't tell you the number of vehicles that come in and pass the smog check at the maximum limit. You can smell it when the car comes in, you smell it at the end of test, it cleans up on your loaded mode test, but it's falling just under the maximum limit. If we institute an idle portion of the test you will see a greater reduction in hydrocarbons and CO as a result of those failures. I think it's a better solution and certainly a much more cost-effective method to clean up emissions.

This comment/recommendation was rejected because:

This recommendation is outside the scope of, and not germane to, the proposed action. As indicated in the ISOR, LPFET is sought to reduce evaporative hydrocarbon emissions. The proposal that an idle test be added to the BAR-97

inspection deals with exhaust emissions, a different emission source that is not being addressed by this proposal.

32. Dave Williams, ATS, Inc.

- a. I certainly understand the need for and support the proposed regulation that would implement a LPFET procedure as an enhancement to the existing Program. There is no question, it would certainly be a fairly large financial investment for myself, as well as other Test-Only facilities, but nonetheless, one that could be managed.

This expression of support for LPFET was accepted and considered in the adoption of the proposed action.

33. Gerald L. Raver, Glenmoor Auto Repair.

- a. Oxygen sensors are bad. If we really wanted to clean the air in California, we would mandate that the manufacturers change the oxygen sensors at a reasonable level. I don't think any of you get in a 747 that we let the parts go until they fail. It's just not good policy and it makes for bad press, but to get the automotive industry to do this would be very, very difficult because it's votes and the legislators don't want to step up against the manufacturers to mandate them to do a very simple maintenance item on a vehicle such as an oxygen sensor that would probably cut down 20 to 25 percent of the failures in California on Smog Checks.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action to implement LPFET testing to reduce evaporative emissions. Further, the Bureau does not have regulatory or statutory authority over motor vehicle manufacturers.

- b. One issue that has been brought up is pre-conditioning of the car. I think we need some better guidelines from the Bureau on pre-conditioning of vehicles. If some vehicles are not warmed up for three minutes, they will not pass and there is no repair that will make it pass. Technology is going at such a rate that we're in constant training but also cars are lasting a lot longer. In 1970 along with two other technicians I was able to handle about 600 cars. That was all we could handle because the cars broke down so much; packing wheel bearings, valve jobs every 60,000.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. As prescribed by Section 3340.42, Smog check stations and technicians shall conduct tests and inspections in accordance with the Bureau's BAR-97 EIS Specifications or the provisions included in that section. This procedure includes when to begin the

inspection to ensure that vehicles are properly warmed-up prior to testing. This regulatory action does not change any existing requirements.

- c. I agree that the LPFET will lower emissions. If a car comes into my Test-and-Repair facility to be tested, we cannot work on the car for any reason. We tell the customer yes, we can smog your car but no, we can't repair it. That gives the customer an opportunity to take it somewhere else. The number of cars failing, if the statistics I've read are correct, will probably be one per year, per Test-and-Repair station for an emission control vapor problem. I'm a GS station and will do the repairs. I have no problem buying the LPFET equipment.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

- d. The Test-and-Repair facilities that don't want to do LPFET testing should be let out of it. The Test-Only stations that test the older cars need the machine to remain in the program. GS stations will need the machine to do the testing for CAP. The other Test-and-Repair stations should have a sign if they don't want to test those vehicles. If they don't want to do the LPFET, they shouldn't be completely out of the program.

This comment/recommendation was rejected because:

A uniform Smog Check test statewide, regardless of subject vehicle model-year (1976 and newer) is sought to minimize motorist confusion. Not all components of the current test apply equally to all model-years of vehicles. For example, on-board diagnostic (OBDII) testing is required only on 1996 and newer model year vehicles. When it was added in 2002, all stations were required to purchase diagnostic devices and upgrade Smog Check test equipment. The majority of stations chose to continue their participation in the Smog Check program.

This recommendation, if accepted, would create multiple Smog Check station classifications making it even more difficult for consumers to know where to take their vehicles when tests and/or repairs are required. A consumer with a pre-1996 vehicle might have to contact or visit a number of Smog Check stations before finding one that would be capable of testing their vehicle. This would be unnecessarily burdensome and complicated.

34. Unidentified.

- a. As I understand it, the main reason behind this LPFET is that it's included in the SIP agreement to protect \$2.5 billion in federal transportation funds. We've already invested a lot of money in this Program for the State of California. It's up to ARB and the Bureau to save the federal highway funding, not us.

This comment/recommendation was rejected because:

The commitments made in the SIP agreement and protection of the \$2.5 billion in federal highway funds are part of the reason for adding the LPFET to the Smog Check test protocols. However, the testing of fuel evaporative systems in order to reduce non-exhaust sources of VOC emissions is also specifically mandated by subdivision (d) of Section 44012 of the Health and Safety Code.

- b. I don't know how much it would cost the State of California to buy this equipment and put one in each Smog Check station, but to save \$2.5 billion, it seems like a pretty easy investment. The State of California could probably buy the equipment in mass quantities for about \$800.00 a piece.

This comment/recommendation was rejected because:

This recommendation cannot be accommodated because to do so would be unconstitutional. Section 6 of Article XVI of the California Constitution provides, in pertinent part, that "The Legislature shall have no power to ... make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever..." For the State of California in general, or the Bureau in particular to purchase LPFET equipment and give them to privately operated licensed Smog Check stations would constitute a gift of public money or thing of value, within the meaning of section 6. In addition, the state cannot buy the LPFET equipment and give them to Smog Check stations, even if the state retained title to the equipment and only loans them to stations, because section 6 also prohibits loans.

II. Initial Testing of Test-Only Directed Vehicles at Gold Shield Stations

1. John P. Rodriguez, owner Smogman Test-Only Centers Inc.:

- a. There are more than enough Test-Only stations in the enhanced areas already with more added every year. Because they are not required to perform repairs, technicians employed at these Test-Only stations do not have as much experience in performing repairs. I suggest that no new Test-Only stations be licensed until they have spent 2-to-5 years as a Test-and-Repair station in order to gain experience.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed action does not make any change to the existing licensing criteria for Test-Only stations or technicians employed by Test-Only stations. Test-Only stations will continue to be limited to testing vehicles, and technicians employed by Test-Only stations must continue to meet the same criteria as technicians employed at Test-and-Repair. Currently, licensing by the state is required for any technician that performs tests and/or repairs for the purpose of certifying vehicles in California's Smog Check

Program. This means that all licensed Smog Check technicians statewide must meet the same minimum eligibility requirements for training and experience, and pass the same examination in order to obtain a license.

- b. How will this proposed action affect the required percentage of vehicles that are initially sent to Test-Only stations in accordance with Health and Safety Code section 44010, and how will the Bureau determine if the required percentage of vehicles are directed to Test-Only stations if GS Stations are allowed to perform initial tests on directed vehicles? How will the Bureau ensure those vehicles will be tested initially without pretest repairs and/or adjustments?

This comment/recommendation was rejected because:

The proposed action does not make any change to the percentage of vehicles directed to a specific station type (i.e., Test-Only) for biennial Smog Check tests or how that percentage is, as required by Health and Safety Code section 44010.5 (b)(2), determined. This proposal simply implements the initial testing of directed vehicles by GS stations. Both Test-Only and GS stations will be able to compete for business to test vehicles that have been directed by the state. Allowing GS stations to perform the initial testing of these vehicles will not affect the direction of vehicles at all.

The proposed action does not change any of the requirements regarding pre-testing or pretest repairs. The Bureau will continue to employ the same methods and techniques it currently employs to monitor stations' and technicians' behavior and performance.

- c. The statistics needed for the "Comparative Failure Rate" under subsection (r) of Section 3340.1 will be offset by this action as well.

This comment/recommendation was rejected because:

The changes sought by this proposed regulatory action do not necessitate a change to the definition of "comparative failure rate (CFR)" at this time. As defined by Section 3340.1 (r), the CFR is used as an eligibility requirement for stations seeking GS station status (certification) as set forth in Section 3392.2. The failure rate at a GS station "must be comparable to the Test-Only station failure rate for all **non-directed** vehicles of the same model-year." (Emphasis added) It is unknown how many consumers with directed vehicles would seek initial tests at the estimated 500 GS stations versus the 1,800 Test-Only stations once this regulatory proposal is implemented. However, the Bureau plans to closely monitor the number of tests performed on directed vehicles by these two station types to determine if Sections 3340.1 (r) and/or 3392.2 should be revised.

- d. Who will ensure that consumers are informed about the Consumer Assistance Program's (CAP) Repair Assistance and Vehicle Retirement options? There is no incentive for a GS station to refer the directed vehicles to CAP, as waiting for the

CAP approval may create delays of 4-6 weeks and consumers may choose a different station from the list provided with their CAP approval letter.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed regulation does not make any change related to informing consumers about CAP. Currently, all station types are required by regulation to provide consumers with a vehicle inspection report (VIR). CAP information is printed on the VIR generated for every failed vehicle. In addition, the state provides informational signs for posting at all of the three types of Smog Check stations (i.e., Test-Only, Test-and-Repair and GS) that include information about CAP.

- e. The initial testing of directed vehicles at GS stations is in direct contradiction to the existing provisions of Section 3340.16 of the California Code of Regulations because it would create a Test-Only facility within the GS station.

This comment/recommendation was rejected because:

This proposal does not contradict the provisions of Section 3340.16 that prohibit a Test-Only station from performing repairs, or referring a vehicle owner to a particular repair facility, or from owning a Test-and-Repair stations within a 50-mile radius. This proposal also does not require two different license types in order to perform initial Smog Check tests on vehicles directed by the state. Rather, it allows both Test-Only stations and GS stations to test directed vehicles. Since GS stations are authorized to repair vehicles, they may offer both testing and repair services for any vehicle, including directed vehicles. Furthermore, Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

- f. The proposed regulation will allow GS stations to certify Test-Only directed vehicles after repair without the need to double check the repairs at a Test-Only station as is required for any non-GS Test-and-Repair station. This proposed action takes the progress made in educating the consumers on the Test-Only component and eliminates the double check standard completely.

This comment/recommendation was rejected because:

It is correct that the proposed action will allow GS stations to test and certify any directed vehicle after repairs. However, this is already allowed under current regulation. Paragraph (3) of subsection (a) of Section 3392.2 provides, in pertinent part, that a GS station shall provide for "...the after-repairs certification of failed vehicles that were directed to and initially tested at Test-Only stations pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code provided that the vehicles are repaired at the GS station." Therefore, Test-Only verification of repairs has

already been partially entrusted to GS stations. The proposed action merely expands on this provision as required by Health and Safety Code section 44010.5 (b)(2).

- g. Instead of this proposal, I recommend having independent referees in existing Test-Only stations as provided in subdivision (b) of Section 44014 of the Health and Safety Code. This individual level of licensing could work for GS stations as well if the department sets the proper qualifications for individual licenses. They could visit local area GS stations as necessary in an independent observer manner.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. While subdivision (b) of Section 44014 permits Test-Only facilities to provide convenient state-contract referee services, this option has not been exercised. The Bureau contracts with the Foundation for California Community Colleges to perform referee services in 36 locations statewide. The recommendation that referees observe test performance at a Smog Check station, specifically a GS station, is outside the scope of the referee services described in current law.

- h. If the GS portion of this proposal is adopted, I recommend that the Bureau establish a streamlined process for Test-Only stations to become GS stations without the necessary waiting period.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The process and/or the qualifications for becoming a GS station are not under consideration in this matter. GS stations must first be Test-and-Repair stations. Any Test-Only station may convert to a Test-and-Repair station at any time if they wish. However, in order to become certified as a GS station, certain additional criteria must be met, as specified in Section 3392.3. Three of those criteria² are performance based, which require a certain amount of historical data to be able to establish and evaluate that performance. At least one calendar quarter's worth of data must be compiled in order to perform the required evaluations and establish the station's performance qualification.

The first of the performance criteria involves the station's vehicle test failure rate³ as compared to Test-Only stations. While it might be argued that the failure rate of a Test-Only station that converts to Test-and-Repair could be used to establish this qualification, the next two performance criteria involve repairs.

The second performance criterion requires that the station have conducted at least 10 successful emission-related repairs in the preceding calendar quarter, as specified. The third performance criterion provides that the station's repair performance must

² See paragraphs (1) – (3) of subsection (a) of Section 3392.3.

³ See subsection (r) of Section 3340.1.

rate within the top 75% of Test-and-Repair stations in the same Smog Check Program area. Because Test-Only stations are prohibited from performing any type of repair, it would be impossible for a Test-Only station to qualify for GS certification immediately upon conversion to a Test-and-Repair station. Furthermore, the Bureau cannot ignore or waive the requirements of its own regulations⁴. Accordingly, the establishment of a “streamlined process for Test-Only stations to become GS stations” would, at the very least, require a regulation change. Such a change is neither included in this proposed action nor is it substantially related so as to be properly included in this proposed action as a modification.

- i. The statements made on Page 3, Section II, of the Notice of Proposed Regulatory Action say that this proposal seeks to improve consumer convenience with the Smog Check Program. It mentions directed vehicles while referring to sections of the Health and Safety Code, but there is no definition for directed vehicles in the Health and Safety Code.

This comment/recommendation was rejected because:

It is not clear what this comment has to do with the proposed action. For the purpose of describing the regulatory proposal, a written description was provided for the term "directed vehicle," first used on Page 3, in the first paragraph of Section II of the Notice of Proposed Regulatory Action. This description and reference does not imply, nor was it intended to imply, that a definition is provided in Health and Safety Code Section 44010.5 (b)(2).

The term “non-directed vehicle” is defined in subsection (s) of Section 3340.1 as a vehicle that is not required to be inspected at a Test-Only station pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code. It logically follows that, prior to the implementation of this change, a “directed vehicle” could be considered to be a vehicle that is pre-selected for testing at – and is directed to – a Test-Only station. Subsequent to the implementation of this change, “directed vehicle” will logically mean a vehicle that is directed to a Test-Only or a GS station at the choice of the vehicle owner.

- j. I believe that the reference to the Test-Only facilities in Section 44010.5 (b)(2) of the Health and Safety Code, which was used as a reference to this action, is referring to Referee or contracted services. These services could be combined with the existing Smog Check Test-Only stations under Section 44014 (b)(2) of the Health and Safety Code, which allows for the placement of Referees in Smog Check Test-Only stations. These words, Test-Only facility are used in many of the different codes and sections of the Laws and Regulations without differentiating between the two facilities or stations. California Code of Regulations Section 3341.1(d) and (p) separates them. There are lots of references between the different types of Test-Only or Referee stations but now you’re talking about letting GS stations also serve in this manner.

⁴ *United States v. Nixon* (1974) 418 U.S. 683, 696.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. This regulatory proposal does not address referee services.

The reference to Health and Safety Code Section 44010.5 (b)(2) in the Notice of Proposed Regulatory Action and ISOR is correct. That section provides that the department shall afford Smog Check stations that are both licensed and certified pursuant to Sections 44014 and 44014.2, the initial opportunity to perform the required inspections and that the department shall adopt, by regulation, the requirements to provide that initial opportunity. The language of Section 44010.5 (b)(2) is mandatory and the Bureau has no option but to implement this Program change.

No mention of referee services is made, nor is there any reference in paragraph (2) of subdivision (b) of Section 44010.5 to Test-Only facilities. However, while there is reference in Health and Safety Code section 44014 (b)(2) to referee services by authorizing the department to include state-operated or contracted referee services at qualified Test-Only stations, that particular provision is not relevant to this proposed action.

- k. Owners will be able to form chains that include a couple of well placed GS stations that could be owned and operated by the same persons that would be able to skirt the Test-Only lane all together. There are already some existing chains of Smog Check stations that have both Test-and-Repair and GS stations included.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The concern regarding ownership of multiple stations is unclear. Current licensing criteria are not being changed by this proposal and already allow common ownership of multiple Smog Check stations. However, common ownership of both a Test-Only and a Test-and-Repair station within a 50-mile radius of each other is prohibited pursuant to Sections 3340.16 and 3340.16.5. A GS station is a Test-and-Repair station. There is no prohibition against a chain of Test-and-Repair stations under common ownership having some or all of their stations certified as GS stations. There is also no restriction concerning where those stations may be located as long as they are all Test-and-Repair stations. In general, the choices of what type of Smog Check station license or certification to obtain, and the location of multiple businesses, are business decisions that depend on the type of services to be offered. Those are not matters addressed by the proposed action.

- l. A rogue technician can work into a GS station and stage repairs and make themselves look good by generating income for shop owners and managers. These individuals could not only hurt the reputation of the shop they work for, but could cause significant damage to the program and the overall mission to clean up the air. This

may be the worst case scenario, but only the Bureau knows how many GS stations have been caught in the act of fraud or misrepresentation to date and how many of those stations have been disciplined. GS stations have just as much potential to develop into a bad station as any other type of station, including Test-Only.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, this proposed action. The Bureau's authority and ability to take disciplinary or enforcement action against illegal activity, including non-compliance with this proposal, will not change upon adoption of the proposed action.

2. Tom Petrone, owner Smog King Test-Only Stations:

- a. The impact to my business of allowing Test-Only directed vehicles to be initially tested at GS stations is far more than the addition of a couple more Test-Only stations in my market. With the number of Test-Only stations continuing to grow, the fight for customers is already a very expensive proposition. By adding the current GS stations and those who would become GS stations for the opportunity, the cost per customer may become insurmountable. This change will ultimately eliminate Test-Only businesses.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. Some Test-Only stations may wish to remain Test-Only stations or they may convert to Test-and-Repair stations. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances.

This element of the proposed action will improve and more evenly balance the competitive market. Test-Only stations have had a distinct and somewhat unfair advantage over Test-and-Repair stations in that a significant share of their business is actually directed to them by the state. Consequently, Test-Only stations only have to compete with other Test-Only stations for that share of the market. A Test-and-Repair station, on the other hand, must compete with other Test-and-Repair stations (including GS stations) as well as Test-Only stations for all of their testing business. Allowing GS stations to perform initial tests of directed vehicles will help this higher-performing segment of the Test-and-Repair industry compete with Test-Only stations on a more equitable level.

- b. The only logical path for my business would be to switch from Test-Only to GS. However, the transition could prove to be fatal, as the process would significantly impact daily operations with the loss of Test-Only directed vehicles during an interim

Test-and-Repair transition period. Until we were able to reach GS status, we would have to turn away the customer base we've worked so hard to establish. I would appreciate consideration of a transition plan to allow Test-Only stations to become GS stations without a six-month qualification period.

This comment/recommendation was rejected because:

Please refer to Section II., comment 1. h., above.

- c. Have you contemplated what you'll do for Test-Only stations to actually continue their business? GS will probably use a test as a loss leader to get customers to come to them and that will eventually put the Test-Only stations out of business. They're going to lose a lot of money in terms of their testing.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Marketing techniques are not addressed in this proposal. Furthermore, the Bureau does not regulate or promote this type, or any other type of marketing strategy.

3. Bryan White, FIC Smog:

- a. This proposal to allow GS stations to perform initial tests on directed vehicles is a huge step backwards. These facilities would be able to unnecessarily fail a vehicle, charge the state \$500 (CAP) plus whatever they want to charge the customer. As far as consumer convenience, they will soon learn they are back where the problem started before the Test-Only (being taken advantage of by being charged unnecessarily). The possible unfairness to CAP is at risk by having to pay \$500 for each unneeded repair. If anything, to keep this program as honest as possible, there should be more vehicles directed to Test-Only stations and a higher concentration on keeping the program honest and fair to the customers, and our air clean.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. CAP allows low-income qualifying owners of vehicles that fail a Smog Check test at any type of Smog Check station to apply for repair assistance offered by the state. Vehicles directed to Test-Only stations may also apply for repair assistance. Owners qualified for repair assistance must have their vehicle repaired at a GS station. The Bureau's staff must approve the repairs, and the cost of the repairs, before work commences and payment is made from the Bureau to the GS station. Bureau oversight of CAP repairs and payments is very thorough. This proposed regulation does not make any changes to any of the CAP provisions or procedures. Furthermore, Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

4. Robert L. Jacobs, J&J Auto Service

- a. Prior to the Test-Only component implementation we, issued approximately 400 certificates per year. We were told by the Bureau to expect a 15% reduction in tests after the Test-Only component was implemented. As a Test-and-Repair station, we now issue only 100 certificates a year, an almost 75% reduction. Our inspection fee is \$71.50 and even at 400 certificates a year we were not breaking even. The repair of failed vehicles is the only financial incentive to remain in the Smog Check Program.

This comment from a Test-and-Repair station that is not GS certified, while not particularly clear, is taken to be a general expression of support for that element of the proposed action that would allow GS stations to perform initial tests on directed vehicles. Therefore, it was accepted and considered in the adoption of the proposed action.

5. Chuck Ecarma, CMC Smog Test-Only

- a. The Bureau is proposing to allow GS stations to perform initial inspections on directed vehicles. This proposal is intended to improve consumer convenience. However, this proposal defeats the purpose of the Test-Only component, because we will be going back to the original problem of the Bureau not being able to obtain data needed to measure any improvement in California's air quality.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. While it is not exactly clear what data this comment refers to, the proposed action would not change any of the existing data entry or collection requirements associated with identifying emissions reductions or assessing improvements in air quality. Furthermore, Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

- b. If the GS stations are allowed to perform initial tests on directed vehicles it will affect the Test-Only stations drastically. The only alternative for these stations to remain competitive will be to become GS stations. One of the requirements to become GS is at least one year of emissions related repairs. What would happen to the almost 1,800 Test-Only stations that do not qualify as GS stations? This would have a great impact on a large portion of the Smog Check inspection business and result in more fraud.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The process and/or the qualifications for becoming a GS station are not under consideration in this matter.

Please refer to Section II., comment 1. h., above.

- c. The Bureau has tried to use percentages to show that GS stations do a good job in obtaining emission failure data. However, the data doesn't take into consideration that the number of failed vehicles reported by GS stations includes those that previously failed at Test-Only stations. GS stations would have to initially perform Smog Check inspections on these "failed vehicles" before they do any repairs. Test-Only directed vehicles cannot be initially tested at a GS station. Therefore, the percentage of Smog Check failure reported by GS stations does not tell the whole story and is, therefore, inconclusive.

This comment/recommendation was rejected because:

This comment is inaccurate. The failure rate data referred to in the ISOR accurately reflects the failure rate between the two station types, Test-Only and GS. The data quoted is based on the results (failure rate) of the first test obtained by a vehicle subject to inspection (referred to as an "initial test") regardless of the type of station performing the test. Therefore, the failure rate reported by GS stations does not include initial tests on vehicles tested at Test-Only stations.

- d. I recommend, as an alternative, stricter enforcement against fraudulent Test-and-Repair stations. Once a station has been issued a citation, they should be watched closely.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. It is not clear how stricter enforcement is related to any aspect of the proposal, but enforcement is not an included subject.

- e. Stricter standards should be imposed on Test-Only stations. Technicians at Test-Only stations should be required to have at least five years of Smog Check Test-and-Repair experience. Automotive schools should require that applicants for Smog Check courses have at least one year of experience as an automotive repair technician.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Licensing standards and requirements for Smog Check stations and technicians is not a subject included in this proposal.

- f. Test-Only stations should not be allowed to offer "pass or don't pay" or "free retest," because this defeats the purpose of the Smog Check Program and gives the station incentive to fraudulently pass vehicles. There is less incentive to fail vehicles because a Test-Only station that uses these marketing techniques cannot generate revenue from repairs. If the vehicle fails, the stations receives no revenue in a "pass

or don't pay" situation. Likewise, the station receives no revenue from the failed vehicles they retest. Test-and-Repair stations should not be allowed to offer "pass or don't pay" and "free retest" either, for similar reasons.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Marketing techniques are not addressed in this proposal. Furthermore, the Bureau does not regulate or endorse this type, or any other type of marketing strategy.

- g. If consumer convenience is the Bureau's goal, a Remote Sensing Device (RSD) should be used because it has been proven more efficient, unobtrusive, and convenient to consumers at a fraction of the cost.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Remote sensing has been considered for inclusion as an element of the state's Smog Check Program. However, it is not an alternative to the biennial testing of vehicles at Smog Check stations or allowing GS stations to test directed vehicles. Nor does it have any application in the visual inspection or functional testing of emission control systems such as the fuel evaporative control system. Remote sensing is more appropriately used in monitoring the exhaust emissions of vehicles between regularly scheduled, station-based inspections.

6. John Everett, R & S Service

- a. I am consistently finding cars in the CAP that were improperly failed at a Test-Only station. A Test-Only station does not have to take responsibility for the quality of the job they perform and can receive increased income for failing a vehicle and offering to re-test it (even at half price), since they do not have to justify the repair. If Test-Only stations were prevented from doing re-tests and the Bureau would require that re-tests are done at Test-and-Repair stations, the public would be informed, and repairs would be done properly and could easily be tracked.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. All Smog Check stations, regardless of station type, are required to perform inspections in accordance with the provisions set forth by statute and regulation. Failing vehicles for the sole purpose of performing a retest is an improper inspection practice and the Bureau's authority to enforce against this type of behavior is not affected or addressed by this regulatory action.

- b. I have seen instances where Test-Only directed vehicles have failed and had repairs performed at non-smog licensed repair shops only to fail again. These vehicles would have been eligible for CAP repair assistance had they gone to a GS station for repairs. Because the repairs were not performed at a licensed Test-and-Repair station, not only do they not qualify for repair assistance; they cannot be applied toward repair cost limits.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, this proposed action. The Bureau's CAP requirements are not being changed by this proposal. Further, the criteria for obtaining a one-time repair cost waiver for repairs that exceed the \$450 repair cost limit is not being changed by this proposal. CAP is a voluntary program for low income or Test-Only directed motorists with vehicles that fail their biennial smog check. To qualify for a repair cost waiver at least \$450 in emissions related repairs must be made to the vehicle at a licensed Test-and-Repair or GS station.

- c. The state needs repair information. If a car goes to a Test-Only station and fails, they're told take it somewhere and get it fixed. The customer takes the car to his regular mechanic, usually not a licensed Smog Check station and not supposed to do repairs of a Smog Check failure. The repairs are done and the car goes back to the Test-Only station, but there's no repair information.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, this proposed action. It is not clear how this comment relates to the proposed action, but repair data is not the subject of any aspect of this proposal.

7. Bob Klingenberg, President, Automotive Service Councils of California

- a. ASCCA supports the proposal to allow GS Stations to perform initial tests on directed vehicle, but feels it should be implemented separately instead of being included with the LPFET.

This comment/recommendation was rejected because:

As indicated in the ISOR, implementation of these two components at the same time is sought to increase the emission reductions achieved through compliance with the Smog Check program and to ensure continued program compliance by consumers and the Smog Check industry. The comments made by ASCCA do not suggest that their concerns regarding the LPFET portion of this regulatory proposal would be alleviated if the actions were separately pursued.

Nonetheless, the expression of support, while qualified, was accepted and considered in the adoption of the proposed action.

- b. There is a concern that Test-Only facilities with technicians who have little repair experience will convert to GS stations in order to remain in the Smog Check Program.

This comment/recommendation was rejected because:

This suggestion is outside the scope of, and not germane to, the proposed action. The proposed action does not make any change to the existing licensing criteria for Test-Only stations or technicians employed by Test-Only stations. Currently, licensing by the state is required for any technician that performs tests and/or repairs for the purpose of certifying vehicles in California's Smog Check Program. This means that all licensed Smog Check technicians statewide must meet the same minimum eligibility requirements for training and experience, and pass the same examination in order to obtain a license, regardless of the type of Smog Check station in which they are employed.

8. Randall Ward, California Emissions Testing Industries Association (CETIA)

- a. We are opposed to the provision that would allow directed vehicles to be tested at GS stations as set forth in Section 3392.2. We believe this proposed action is inconsistent with California Law and the Air Resources Board Memorandum Agreement with the U.S.EPA.

This comment/recommendation was rejected because:

Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

[See also Section II., comment 9. a., below.]

- b. The combative issue and debate surrounding the direction of vehicles to Test-Only stations has existed since this program's inception. The issue was substantially debated during the last legislative session in the Senate Transportation and Housing Committee hearing on AB 578. One of the primary reasons that measure didn't leave the Committee was attributable to the Senators' concern regarding the conflict of interest that would exist by allowing a GS station to initially test a vehicle and receive CAP reimbursement for repairs to a failing vehicle. This is analogous to giving the bank janitor the keys to the vault. The State is totally ignoring its fiduciary responsibility in this regard.

The primary reason for the separation of the test from the repair function is to achieve the emission reductions anticipated in the SIP. Previous Smog Check Programs

(BAR-84 and BAR-90) failed to produce the reductions projected by ARB in the SIP. These Programs did not include the Test-Only component and did not succeed. The Test-Only stations have no economic motivation in the outcome of the test.

There's no data to indicate that any change in the program's framework proposed by AB 578 would improve the program's only goal; the public's health. These proposed regulations don't demonstrate any public health benefit will accrue. There's no data to support the regulations.

This comment/recommendation was rejected because:

What did or did not occur during the Legislature's consideration of AB 578 is irrelevant to the proposed action to allow GS stations to perform initial tests on Test-Only directed vehicles. This proposal is already required to be implemented pursuant to Health and Safety Code section 44010.5 (b)(2).

- c. An unfinished study by Sierra Research, under contract to the Bureau and ARB, shows 40 percent of vehicles after failing an initial test and being repaired, would begin failing subsequent tests the following month and 20 percent of the vehicles that passed the initial test would fail the same month. This brings into serious question the quality of repair. Quality repairs are necessary to produce the public health benefit anticipated in the SIP. Conventional wisdom concludes there are only two reasons for the poor repair performance, fraud and incompetence. The Sierra research work is not concluded and anticipates evaluating the performance of GS and Test-only stations. We believe it is intellectually derelict for the Bureau to proceed with these regulations to enact major structural change to this program without the benefit of that final data.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The study currently being performed by Sierra Research focuses on the quality and durability of emissions-related repairs. The issue of repair quality or durability is not addressed in the proposed action.

- d. The ISOR states the provision contained in the regulations to allow GS stations to conduct inspections of directed vehicles would improve consumer convenience. This defies the analysis the Bureau prepared at the program's onset that estimated approximately 400 Test-Only stations statewide could accomplish the program's objectives to meet the consumers' convenience. There now exist approximately 1,700 Test-Only stations. The Department of Consumer Affairs does not receive consumer complaints of sufficient magnitude to even cause discussion on the issue of convenience. Further, the IMRC conducted its own study of consumer satisfaction with the program and found statistically amazing consumer content. The one-stop shop has been the Test-and-Repair industry's cry throughout the term of the program and hasn't been matched with any consumer outcry of inconvenience. This is clearly

a marketplace issue that is being defended under the proclamation of consumer choice. The Bureau has not provided any analysis or data to support the necessity of the one-stop shop as necessary for consumer convenience. Regardless, the primary goal of the program is public health, not consumer convenience. It is the diametrically opposed goals of public health and consumer interest between the ARB and the Bureau that has historically exacerbated the achievement of SIP goals.

This comment/recommendation was rejected because:

The inconvenience the ISOR addresses is the inconvenience consumers face when directed to a specific station type (Test-Only stations) for Smog Check certification. The fact that motorists with directed vehicles must seek a specific station type for inspection and another station type for repairs if the vehicle fails, has been viewed as an inconvenience. This was definitely true when the directed vehicle program began in 1997 when only a few Test-Only stations existed. Since that time the number of Test-Only stations has grown to approximately 1,800. While the greater number of Test-Only stations provides motorists with more Test-Only stations to choose from, this proposal will provide motorists with even more choices, including the choice of a GS station. Under this proposal, motorists would be able to choose between a Test-Only station and a GS station. The additional functions of a GS station compared to those performed by a Test-Only station are seen as consumer conveniences. GS stations can perform emission-related repairs and state funded repairs for the state's CAP. In addition, they must meet and maintain specific performance standards. Furthermore, Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

- e. The Bureau defends proposing to allow GS stations to test directed vehicles on the basis of similar failure rates. The failure rates for all types of stations on like vehicles should be the same. Failure rates alone are not an adequate measure of performance. The issue of which performance measures should be used to rank stations has been discussed throughout the years. Why hasn't the Bureau developed other measures of performance such as customer wait time if consumer convenience is a primary objective?

Further, given the looming issue of quality of repair presented in the initial findings of Sierra Research, it is necessary to ask why the Bureau did not substantiate its allowing GS stations to test directed vehicles. How do GS stations perform on the issue of quality of repair? The CAP cost of an emission system repair at a GS station is nearly twice as high as a repair conducted at a regular Test-and-Repair station. Is the additional cost producing a more durable or higher quality repair? This question is particularly important when the State of California is paying for the repair under CAP.

This comment/recommendation was rejected because:

The only similarity between Test-Only stations and Test-and-Repair stations that can

realistically be used for performance comparison is the test. One of the reasons the Test-Only component was created was a theory that the performance of the test at a station that has no competing interests in the outcome would be assured of being accurate and unbiased. Since the purpose of the test is to identify vehicles that are not in compliance with emissions requirements and standards so that they can be properly repaired and brought into compliance, failure rates are a critical indicator of station performance. Therefore, the failure rate is the most reasonable and logical factor to use in comparing the performance of GS stations to that of Test-Only stations.

No other legitimate performance measures have been suggested. Customer wait time cannot be used to compare Test-Only station performance to that of Test-and-Repair stations. Test-and Repair stations have many other factors in their operations that can impact customer wait time significantly. These stations not only perform the Smog Check tests, but they perform the repairs on failing vehicles as well. In addition, many Test-and-Repair stations also provide general automotive repair services (non-Smog Check related) and routine preventative maintenance services. Test-Only stations have none of those factors affecting customer wait time. It would be unfair to Test-and-Repair stations and, therefore, unreasonable to use customer wait time as a performance measure for comparing Test-Only to Test-and-Repair stations.

The issue of quality of repairs and the study currently being performed by Sierra Research is not germane to the proposed action as noted in the response to comment 8. c., above.

- f. After reviewing the Bureau data we have concerns about the performance of GS stations. We found that approximately 10 percent of vehicles that received emission repairs at a GS station failed when re-tested at a Test-Only station. Presumably the owners of these vehicles were given a free or discounted re-test at the Test-Only station that initially failed the vehicle. If an evaluation of GS station repair performance has been conducted, why isn't the data included in the ISOR as a measure of performance? The constrained issue of measure of performance confined to fail rates is absolutely ridiculous.

When GS station were authorized to perform a retest of a Test-Only directed vehicle following a repair, we asked the bureau to conduct a statistically representative sample of the repaired vehicles to determine repair and test performance. Although the Bureau committed to conduct the research at either the referee or Test-Only stations, to our knowledge this has not been done. This would seem to have been a necessary component of program evaluation. Once again, under the heading of performance, used as a justification for these proposed regulations, the proposed regulation lacks necessary supporting data. Why has the Bureau not randomly tested vehicles that were re-tested at GS stations following a repair?

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action.

Repair performance, quality and/or durability is not addressed in the proposed action. This element of the proposed action deals exclusively with the testing of directed vehicles at GS stations, not repairs.

- g. Test-Only stations aren't permitted under their license to conduct any repair and therefore, have no ability to recoup the losses associated with losing business to the GS network. It appears the Bureau has just made a decision to cull the marketplace without any discussion with the impacted industry on how best to pursue this endeavor.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau is not in existence to ensure that one type of business model is more successful than another.

- h. We also request the proposed regulation, as it pertains to the allowing of GS stations to conduct initial tests on directed vehicles be amended out of these regulations in the interest of producing a timely evaporative emissions test regimen into the Smog Check Program.

This comment/recommendation was rejected because:

This comment is inconsistent with comments 7. a. through c. in Section I., above. First, it is suggested in 7. a. through c. that the portion of the proposed action that would add LPFET to the Smog Check Program test protocols be immediately halted. Then here it is suggested that the portion of the proposed action that would allow GS stations to perform initial test on Test-Only directed vehicles be eliminated from the proposed action in order that LPFET may be implemented quickly. There is no reason to separate the two elements of the proposed action as they each must stand on their own merits whether they are combined in one rulemaking or two separate rulemakings.

9. Stephen R. Hamilton, Wagner, Kirkman, Blaine, Klomparens & Youmans, LLP – Attorneys at Law, counsel for CETIA

- a. The Bureau's enactment of the proposed regulation and its reliance on the Health and Safety Code section 44010.5 (b)(2) to allow GS stations the ability to perform the initial testing and certification of Test-Only directed vehicles is illegal. Section 44010.5 (b)(2) makes reference to Sections 44014 and 44014.2, which deal with the licensing of all Smog Check stations and the establishment of the GS program. The bureau presumably believes that this section authorizes GS stations to participate in the "initial opportunity to perform the required inspections" "upon increasing the capacity of the program." Read in its entirety, it is quite clear that when Section 44010.5 (b)(2) refers to "the program," it is referring to the Test-Only component

established by the statute. Allowing a GS station that is a repair and retest facility, to perform initial tests on Test-Only directed vehicles is in directed conflict with the remainder of Section 44010.5 and the Code in general.

Section 44010.5 (b)(2) should also be read in the context of the legislative intent behind it. When the GS program was enacted, it was the intent of the legislature that any expansion of the Test-Only component should be offered to license Test-Only facilities first. Senate floor analysis of AB 2515, the “GS” legislation, dated August 13, 1996, stated that the bill was to provide that “if the test-only component is expanded beyond 15 percent of the vehicles subject to testing, licensed test-only facilities would have the first opportunity to perform such work. If an insufficient number of licensed facilities existed, then the capacity of the contracted network could be increased.” Upon analysis of this legislative history it becomes abundantly clear that the effect of Section 44010.5 (b)(2) is to show a preference for expanding the Test-Only component through state licensed Test-Only stations as opposed to state contracted or state operated Test-Only facilities, and not to allow any Test-and-Repair Smog Check stations to perform the inspections on Test-Only directed vehicles.

Section 44010.5 (b)(2) deals with affording Smog Check stations the “initial opportunity to perform the required inspection”, but only “upon an increase in the capacity of the program.” However, nowhere in the proposed regulation does the Bureau base its decision to allow GS stations to perform the initial inspections on Test-Only directed vehicles upon an increase in “the capacity of the program,” which would be required, even under the bureau’s overly broad reading of Section 44010.5 (b)(2). Accordingly, Section 44010.5 (b)(2) does not provide a legal basis for the bureau’s proposed regulation.

This comment/recommendation was rejected because:

The term “program,” as used in paragraph (2) of subsection (b) of Section 44010.5 may very well refer to the Test-Only component of the Smog Check Program. However, that does not affect the Bureau’s reliance on paragraph (2) as the authority for the proposed action to allow GS stations to perform initial tests on directed vehicles. Whether “program” is intended to mean the Motor Vehicle Inspection and Maintenance (Smog Check) Program, the enhanced program, the basic program, the Test-Only program, or the GS program, the fact remains that the Smog Check stations referred to in this paragraph are licensed Test-and-Repair stations certified as GS stations.

The term “smog check station,” as defined in subsection (c) of Section 3340.1, is a generic term that may be used to refer to either a Test-Only station or a Test-and-Repair station, and by extension, to even Repair-Only stations. In the context of Section 44010.5 (b)(2) – and given the specific reference to certification pursuant to Section 44014.2 – the term “smog check stations” must be interpreted as referring to Test-and-Repair stations. That is the most reasonable and logical interpretation since

only Test-and-Repair stations may be certified as GS stations pursuant to Section 44014.2. Therefore, it cannot reasonably be concluded that allowing GS stations to perform initial tests of directed vehicles is illegal or is in directed conflict with the remainder of Section 44010.5. Rather, it should be viewed as an exception, not a contradiction.

The reference to the Senate floor analysis of AB 2515, dated August 13, 1996, as evidence of legislative intent is erroneous and misleading. A *subsequent* Senate floor analysis, dated August 20, 1996, revised the statement quoted from the earlier analysis. What that later analysis said was, in pertinent part, "...if the test-only program is expanded beyond 15 percent of the vehicles subject to testing, *smog stations that are licensed and certified pursuant to Sections 44014 and 44014.2 of the Health and Safety Code* would have the first opportunity to perform such work." (*emphasis added*) The reason for the differences between the statements in the two Senate floor analyses can be traced back to earlier versions of the bill itself. The first reference in Section 44010.5 (b)(2) to Test-Only stations being afforded the first opportunity to perform the additional work is found in the April 23, 1996 amended version of AB 2515. However, the bill was subsequently amended in the Senate August 20, 1996, removing the Test-Only reference and replacing it with the phrase "*smog stations that are licensed and certified pursuant to Sections 44014 and 44014.2.*" That language remained unchanged thereafter and was included in the chaptered version of AB 2515 (Chapter 1088, Statutes of 1996). The August 20 analysis also makes reference to "the development of a 'gold shield' program for the *test and repair* of specified vehicles" (*emphasis added*) and "'gold shield' (combined test and repair) smog check facilities." This is further evidence of the Legislature's understanding and true intent regarding Smog Check stations certified pursuant to Section 44014.2; i.e., GS Test-and-Repair stations. After a complete and accurate analysis of the legislative history, it is clear that the effect of Section 44010.5 (b)(2) is to show a preference for expanding the Test-Only component through licensed (44014) and voluntarily certified (44014.2) GS Test-and-Repair Smog Check stations rather than licensed Test-Only stations. The intent was clearly to allow certified GS Test-and-Repair Smog Check stations to perform inspections on Test-Only directed vehicles, as provided in this element of the proposed action. Therefore, as this comment/objection is found not to be credible, the Bureau continues to rely on paragraph (2) of subsection (b) of Section 44010.5 as the authority for this element of the proposed action.

As to the comment regarding a lack of reliance on or reference to "an increase in 'the capacity of the program,'" the ISOR contains a very clear and specific reference⁵ to the increase in the percentage of vehicles that are directed to Test-Only stations. That percentage has been increased from 15% to 36% over time in response to a 2000 commitment to the federal government (August 17, 2000 letter to U.S. EPA from ARB and the Bureau). As part of that commitment, California advised that in addition to increasing the number of vehicles to be directed, the type of station that

⁵ Initial Statement of Reasons, II. Initial Testing of Test-Only Directed Vehicles at Gold Shield Stations, Factual Basis, page 11, second paragraph.

could perform initial tests on directed vehicles could be expanded to include *high-performing* stations. This was followed by regulations in 2003 that specified performance criteria for GS stations. Based on the established performance criteria, GS stations are considered to be *high-performing* stations. Therefore, it should be clear that an increase in the capacity of the program was included as one of the elements discussed in the Factual Basis for the proposed action.

- b. A GS certified station, by definition, is a station which is authorized to perform smog related repairs, re-tests and certifications, but only after a directed vehicle has initially failed the required smog test at a Test-Only facility. Allowing the GS station to perform the initial smog test on a Test-Only directed vehicle, as well as to perform the repair and retest, would clearly violate section 44014.2, which is the basis of the GS certification program.

This comment/recommendation was rejected because:

Was it not for the clear legislative intent in adding subsection (b) to Section 44010.5, as discussed under Section II., comment 9. a. above, it might be reasonable to reach the same conclusion expressed in this comment. Section 44014.2, as it was originally enacted, could be interpreted as only allowing GS stations – in addition to their general authority to test, repair and certify non-directed vehicles – to repair, re-test and certify directed vehicles that were previously failed by a Test-Only station. However, the enactment of Section 44014.2 was included in the same legislation that added subsection (b) to Section 44010.5, AB 2515. It is logical to conclude from this that the Legislature, by including both provisions in the same bill, recognized and intended the provisions of paragraph (2) of subsection (b) of Section 44010.5 to be an exception to the limitation implied in Section 44014.2. Therefore, this comment/objection is found to be without merit.

- c. The Test-Only component splits up the test function from the repair function of the Smog Check system for consumer protection purposes so as to decrease potential fraud, among other things. The proposed regulation, however, states that it is beneficial to consumers because it will provide the consumer with more choices when seeking compliance with Smog Check requirements, essentially setting up virtual one-stop-shopping for the consumers smog related needs. Encouraging one-stop-shopping for consumers and setting up the Test-Only component are mutually exclusive goals. In other words, the one-stop-shop that the proposed regulation will create completely destroys the purpose of a bifurcated Test-Only component because it allows vehicles that would normally be mandated by law to be inspected at Test-Only facilities to be inspected and repaired at the same station.

This comment/recommendation was rejected because:

As discussed above in response to comments 9. a. and b. immediately above, paragraph (2) of subdivision (b) of Section 44010.5 of the Health and Safety Code clearly provides an exception to the requirement that certain vehicles be inspected at

Test-Only stations. This concept is reinforced by the provisions of Section 44014.2 which also allow vehicles that would otherwise have to be tested and receive a certificate of compliance from a Test-Only station to be repaired, re-tested and certified at a GS station. Furthermore, consumer (motorist) convenience is not a foreign concept in California's Smog Check Program. It is specifically addressed in Legislative findings and declarations found in Section 44001, and in Section 44014.2.

- d. Using the bureaus overly broad reading of the statute, if GS stations are allowed to perform initial smog tests on Test-Only directed vehicles; it would stand to reason that all stations which are licensed under Section 44014, including repair-only shops, should be allowed to perform such inspections as well. Such a reading of the statute could not have been intended. Allowing any station other than a Test-Only station, be it a GS, Test-and-Repair or a Repair-Only station, to begin performing initial inspections on Test-Only directed vehicles is in direct violation of Section 44010.5, which establishes the Test-Only component. A more reasonable reading of Section 44010.5 (b)(2) would be that upon an increase in the capacity of the Test-Only component, the initial opportunity to handle the additional inspections would be afforded to existing Test-Only stations licensed under Section 44014, and any other licensed station that chose to become a Test-Only station to accommodate such an increase in capacity.

This comment/recommendation was rejected because:

This interpretation completely ignores and makes superfluous the second qualification in Section 44010.5 (b)(2); i.e., certification pursuant to Section 44014.2. Considering that oversight, not only the more reasonable, but the correct reading of that paragraph would be that the initial opportunity to handle the additional inspections would be afforded to Test-and-Repair (smog check) stations that are licensed pursuant to Section 44014, and also certified as a GS station pursuant to Section 44014.2. The term "smog check station," as defined in subsection (c) of Section 3340.1, is a generic term that may be used to refer to either a Test-Only station, a Test-and-Repair station, or by extension, a repair-only station. In the context of Section 44010.5 (b)(2) – and given the reference to voluntary certification pursuant to Section 44014.2 – the term "smog check stations" must be interpreted as referring to Test-and-Repair stations. That is the most reasonable and logical interpretation since only Test-and-Repair stations may be certified as GS stations pursuant to Section 44014.2. By the same reasoning, it must also be concluded that the provisions of Section 44010.5 (b)(2) cannot be extended to repair-only stations because they do not perform tests and, like Test-Only stations, they cannot be certified pursuant to Section 44014.2. Therefore, it cannot be concluded that allowing GS stations to perform initial tests of directed vehicles violates Section 44010.5.

[See also Section II., comments 9. a. and b., above.]

- e. Upon enactment of the proposed regulation, Test-Only stations could potentially perform less than the minimum 15% of initial inspections required by law and even be put out of business, because customers may choose to take their vehicle to a GS one-stop-shop instead. The proposed regulation does not provide for or protect against this potential violation of Section 44010.5 (a). Thus, the proposed regulation is illegal as proposed.

This comment/recommendation was rejected because:

While in theory it might be possible for Test-Only directed consumers to flock to GS stations in such large numbers that less than 15% of the required initial inspections would be performed at Test-Only stations, that is highly unlikely. There are only about 500 GS Stations in existence compared to almost four times as many Test-Only stations. Using the Bureau's data from calendar year 2005⁶, 15% of the approximately 8.4 million initial tests performed in the enhanced program areas each year would be roughly 1.3 million tests. The data show that for the same period, Test-Only stations performed approximately 2.8 million initial tests of *directed* vehicles. Assuming no significant increase in the number of GS stations, each GS station would have to perform initial tests, in addition to their current testing volume, of at least 3,000 directed vehicle on average before compliance with the 15% requirement would be in jeopardy. It is certainly expected that there will be some change due to the additional consumer choice offered by the proposed action, but it is completely unrealistic to imagine such a drastic change as is suggested by this comment/objection.

Furthermore, it should also be noted that Test-Only stations statewide performed almost 4.9 million initial test in calendar year 2005, only 2.8 million of which were performed on *directed* vehicles. That means that a significant number of consumers (approximately 2 million) already choose to have their vehicles tested at Test-Only stations even though they are not required to do so. Whether this is due to convenience, price or some other factor, it suggests that the Test-Only industry is probably doing a good job of marketing its services overall. Rather than being put out of business, it is more likely that most Test-Only stations will continue to effectively market their service to non-directed consumers. Of course, as has been suggested by several individuals who have commented on this element of the proposed action, some Test-Only stations may convert to Test-and-Repair stations with the intention of eventually qualifying for and acquiring GS certification. The proposition that Test-Only stations will be "put out of business" is merely speculation and is not supported by any particular facts.

It has been the Bureau's experience in the past, that when major changes in the Program are made – such as requiring stations in all non-enhanced areas to upgrade their emissions analyzers to the BAR-97 EIS platform at a cost of between \$15,000 and \$18,000 – there has been no significant change in overall station population among the affected stations. That is not to say that some stations will not choose to

⁶ Data for calendar year 2006 is not currently available.

leave the Program, but rather that the normal influx of new stations coming into the Program will offset those losses and station population will stabilize relatively quickly.

- f. It is clear that the proposed regulation violates the structure and purpose behind the Smog Check Program, and is in direct conflict with the previously mentioned code sections. If the bureau fails to reject this proposed regulation, it will result in legal action challenging the regulation as enacted by the bureau and the regulation will ultimately be deemed illegal in a court of law.

This comment/recommendation was rejected because:

As previously stated, the Bureau has concluded that the proposed action to allow GS stations to perform initial testing of Test-Only directed vehicles is not in conflict with, but is in fact, consistent with existing statutory provisions. Therefore, the Bureau is confident that this proposed action, if challenged in court, would be upheld.

[See also Section II., comments 9. a., b. and d., above.]

10. Christopher Walker, Law Offices of Nossaman, Guthner, Knox & Elliott, LLP, on behalf of the California Automotive Business Coalition (CalABC)

- a. The air quality benefits of this proposal are clear. In addition to the 14 tons per day of hydrocarbon emissions attributed to the “Low-Pressure Evaporative Emissions Testing and Repairs,” many more tons of hydrocarbon, oxides of nitrogen and carbon monoxide emissions will also be further reduced by the performance based “GS” portion of the proposed regulation.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. I have not been privy to what the Sierra Research report is going to say, but if 40 percent of the cars are failing on the street within six months of being tested and repaired and certified once again, then that indicates that the current system has some problems. That’s because, from CalABC’s perspective, the current system is not based on performance. Right now we send the highest emitting vehicles in the state to Test-Only stations to be scrutinized at a higher level. To be a participant in the Test-Only program, you do not have to achieve any particular level of performance. It is not performance based. If we are indeed having a problem in today’s program, it’s largely because of that.

The incentives and corresponding ability of Test-Only stations to comply with the law and properly identify the state’s worst polluting vehicles has degraded. In fact, the most recent data from 2005-06 show that Test-Only stations were the recipients of the vast majority of Administrative Disciplinary Actions, citations and office conferences

by the Bureau for allegations ranging from fraud to other violations of the Health and Safety Code and the Business and Professions Code. And “clean piping”⁷ activity was responsible for 83% of the Administrative Disciplinary Action filings against Test-Only stations. The same data show, on the other hand, that GS stations have the cleanest record of compliance. Furthermore, the Bureau data show the GS station category is the highest performing in the identification of failing vehicles.⁸

Under the proposed changes to Section 3392.2 of the regulation, the Bureau will now begin to place a premium on actual performance by stations in the Smog Check program. Years of data collected from the program support this change. The regulatory proposal would allow a portion of the worst polluting vehicles to receive their biennial emissions inspections from GS stations, which data proves are the best performing stations in the Program. This beneficial change remedies a fundamental weakness in the current program. This measure will ensure that California is complying with both health based air quality standards and the requirements of the federal Clean Air Act Amendments of 1990. This regulation also provides a means for all stations to access the emissions testing marketplace through consistent high performance and therefore increase their investment in the Program.

California’s compliance with health-based air quality standards and the federal Clean Air Act Amendments of 1990 has always been predicated upon the ability to accurately test vehicle emissions systems and perform effective and cost-efficient repairs on those vehicles identified as having excess emissions. California has too much at stake to not make a change, as authorized under law, to direct our worst polluting vehicles to the best performing stations. In fact, if we don’t make the change as proposed in Section 3392.2, we place at risk not only the health of breathers in this state but also jeopardize federal transportation funding and economic growth.

This expression of support was accepted and considered in the adoption of the proposed action.

- c. The arguments waged by the Test-Only business interests in opposition to the proposed regulation is that the state of California is required by federal law (Clean Air Act Amendments of 1990) and subsequent regulations adopted by the United States Environmental Protection Agency (USEPA) to implement a Test-Only vehicle inspection and maintenance system. Their argument continues that we will be in violation of federal law and will break the commitment we made to the federal government in our State Implementation Plan (SIP) if we allow GS stations to inspect directed vehicles. These arguments are false on multiple levels.

⁷ Clean piping is an illegal practice that involves entering identification data for one vehicle into an analyzer, but actually testing another “known-to-be-clean” vehicle by inserting the emissions probe into the tailpipe of the clean vehicle and recording its emissions.

⁸ Analysis of BAR HEP and non-HEP failure rates show Gold Shield stations are highest performers in identifying those vehicles with excess emissions.

First, the primary “clean air” commitment to the federal government is to achieve emissions reductions from our vehicle inspection and maintenance program that is equal to or exceeds the federal performance standard. And, it is important to note that federal law does NOT prescribe the manner in which states may approach meeting this performance standard. For example, under the Federal Highway System Designation Act of 1995,⁹ the USEPA cannot require the implementation of a Test-Only inspection and maintenance system nor discount the effectiveness of state Test-and-Repair inspection and maintenance programs.

Second, in all of our agreements with the USEPA, California has always reserved the right for flexibility to revise its SIP. In a letter from Mr. Michael P. Kenny, Executive Officer of the California Air Resources Board to Ms. Felicia Marcus, Administrator of USEPA Region IX, dated August 17, 2000, California promised to fulfill the state’s SIP commitment to the federal government for conformity purposes by improving the effectiveness of the Smog Check program “*by directing more vehicles to Test-Only and/or high performing stations.*” Accordingly, program adjustments to increase performance by sending more vehicles to high-performing stations as identified by the Bureau cannot be regarded as a violation of the SIP, federal law, nor California’s commitment to clean air.

Finally, under federal law, California does not actually have a Test-Only program thereby rendering moot all of the arguments raised by Test-Only business interests and their allies. In fact, the USEPA has never recognized California as having a Test-Only program because we actually violate the federal standards established for Test-Only under federal regulations 40 CFR Part 51. Sec. 51.353(a). California does not have a federally recognized Test-Only program because we are in violation of federal law by allowing Test-Only stations in this state to provide routine automotive services (oil changes, etc.). Upon formal requests from other state entities, ARB has never been able to provide the amount of statewide emissions reductions California was actually receiving from the USEPA for the Test-Only portion of the program¹⁰. This is because USEPA does not recognize any portion of our program as meeting the federal laws governing Test-Only. Thus, California does not receive any “presumptive equivalence” credit under federal law for the Test-Only portion of the program.

⁹ **Excerpt from Federal Law (Section 348, S. 440)** SEC. 348. MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS.

(a) IN GENERAL- The Administrator of the Environmental Protection Agency hereinafter in this section referred to as the ‘Administrator’ shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with such section.

(b) LIMITATION ON PLAN DISAPPROVAL- The Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.

¹⁰ Letter from the California Inspection and Maintenance Review Committee to Assembly Member Shirley Horton dated May 2, 2006

CalABC affirms the authority of the Bureau to implement the proposed regulations. The ongoing commitment to protect the breathers, taxpayers and future economic development is demonstrated by moving the Smog Check Program in a direction that increases the reduction of harmful emissions, rewards station performance and punishes non compliance.

This expression of support was accepted and considered in the adoption of the proposed action.

- d. In pursuing AB 2515, I remember Assembly Member Boller was not real happy with the Test-Only requirements and AB 2515 was amended to allow GS stations the initial opportunity to test the cars that were being expanded out beyond the 15 percent. That was clearly the intent and so we believe that the Bureau has the unfettered authority to pursue the GS portion of this proposed action.

This expression of support was accepted and considered in the adoption of the proposed action.

11. Lynn Hidley, Deputy Director, Registrations Operations Division, Department of Motor Vehicles.

- a. Vehicle registration renewal notices currently direct vehicle owners either to any Smog Check station or to a Test-Only station. If the proposed action is approved, vehicles currently directed to a Test-Only station may also go to a GS station. The information on the renewal notices will have to be reformatted to include information concerning the GS stations.

This comment/recommendation was neither accepted nor rejected, but is acknowledged as follows:

The Bureau is aware of the changes that will need to be made to renewal notices and has discussed the matter with Department of Motor Vehicles (DMV) Registration Operations Division staff. The cost to make the changes is expected to be relative minor and will be covered under the Interagency Agreement currently in effect between the Bureau and DMV. The Bureau will work with DMV to ensure that the necessary changes are made as expeditiously as possible and in a cost-effective manner.

12. Gabriel Sanchez, A&D Automotive Repair

- a. I operate a Test-and-Repair station. I feel that I am kind of dependent on Test-Only stations for my business. I have been hoping for the Test-Only stations to fail cars and for the cars to be brought to my shop so I can work on them. With this

proposition, I won't have to do that anymore and it's a good thing for me because I can qualify as a GS station and benefit.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. The only reason we are here is because of the illegal clean piping. Before, if I wanted to do clean piping, I couldn't because the car was Test-Only directed and most of the cars that are Test-Only directed are the ones that are going to be clean piped. So you guys gave the power to the Test-Only stations to do clean piping if they wanted to. I went to school to learn to fix a car. I get on my knees and work out there checking everything on the car. I'm trying to make an honest buck but at the same time, I know there are a lot of people out there clean piping. The only reason that isn't changing is because you guys know that there is something going on and it's obvious. I think some money should be put into surveillance and to be more into who's not doing the right thing.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's enforcement and surveillance budgets are not the subject of this regulatory proposal.

- c. My question is how are you going to keep the GS stations from committing fraud? How are you going to find out if they're being honest with the customers and they're not overcharging? GS stations are going to have all the power to do whatever they want. So what are you going to do to keep that from happening?

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's authority and ability to take disciplinary or enforcement action against illegal activity, including non-compliance with this proposal, will not change upon adoption of the proposed action.

- d. All those people that are out there clean piping right now – they're not going to just give it up. They're going to go and buy a Test-and-Repair station that is going out of business and they're going to start doing this again. Is the Bureau ready for that? If so, what is the Bureau going to do about it?

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The criteria pertaining to the licensing of Smog Check stations and the Bureau's enforcement capabilities are not under consideration in this matter.

13. Manuel Babudjian, Smog One Test-only

- a. I agree with the proposal to allow GS Stations to do initial tests on Test-Only directed cars.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. Test-Only stations should be given a chance to change into GS stations based on their abilities. We're building our business and then, if you change to allow GS stations to do the initial testing of the directed vehicles, it's going to hurt us. It might be better for us to change back to being a Test-and-Repair station and do all the repairs and adjustments as well as the testing.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. Some Test-Only stations may wish to remain Test-Only stations or they may convert to Test-and-Repair stations. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances.

14. Gene Morrill, Certified Auto Specialists

- a. As far as the initial testing by the GS stations, I think that's a step in the right direction. In my business we do general repair so we don't do a lot of smog. We've seen at least a 60 percent drop in Smog Checks. Right now, I don't even do enough Smog Checks to qualify for the GS because we've lost so much due to the first six model-year exemptions. Also, at least half of my customers that come in for a Smog Check I have to turn away because their car is directed to Test-Only. That's not fair to those of us that have been in the program for years and years, and have always done what the Bureau has wanted. We've supported the program, done our best to make it work, and I think they should let everybody do the initial tests, or make it easier to become a GS station. Right now it's not fair to those of us that have been in the program forever, and that want to stay in the program; we want to invest the money in the equipment

This general expression of support for the proposal to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

- b. I recommend that, if you're going to keep the Test-Only system, send all the cars to the Test-Only stations for initial testing. Take away their pre-test mode, and all the other test modes, and give them one shot, pass or fail. Then let us repair shops fix them. That would be just one simple solution.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The recommendation to keep the Test-Only system contradicts the earlier statement that initial testing by GS stations is a step in the right direction. As indicated in the ISOR, this action is sought to provide consumers with more choices when seeking compliance with the Smog Check program by expanding the testing of directed vehicles to GS stations. The proposed action does not address the number of vehicles directed or the manner of selecting vehicles for direction to Test-Only stations.

15. Tro Khayalian, Pasadena Test-Only

- a. If you allow the GS stations to do the initial test on Test-Only directed vehicles Test-Only stations are going to loose business. Those people have equipment purchase contracts or leases. They're going to go out of business. Who is going to pay for that?

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau is not in existence to ensure that one type of business model is more successful than another.

16. Tom Dotts, High Tech Auto

- a. I totally believe that GS stations are good stations. However, when you take and dangle a carrot out in front of even a good person they can be tempted. It's like, if I pass the car, I'm only going to get \$50.00, but as a GS station, if I fail the car I have the opportunity to make up to \$500.00 that's going to be guaranteed to me from the State (CAP). I believe that is too much of an incentive to fail cars when maybe the car didn't actually need to be failed. I believe it's a potential for fraud and that shouldn't be put forth to a good technician.

This comment/recommendation was rejected because:

This proposed regulation does not make any changes to CAP. CAP allows low-income qualifying owners of vehicles that fail a Smog Check test at any type of Smog Check station to apply for repair assistance offered by the state. Vehicles directed to Test-Only stations may also apply for repair assistance. Owners qualified for repair assistance must have their vehicle repaired at a GS station. The Bureau's staff must approve repairs and the cost of the repairs before work commences (up to \$500) and payment is made from the Bureau to the GS station.

- b. I believe that there will be a large number of GS stations that will benefit from this and it will hurt as many or more Test-Only stations. Since we have the six model-

year drop out, there are a lot of Test-Only stations that are on the brink of going under as it is right now. I think this would be the last nail in the coffin that would put a lot of Test-Only stations out of business. I know, from the amount of business that is sent to our facility from Test-and-Repair stations, there are two shops that are close to me that would probably become GS stations. That alone would probably be a 20 percent cut in my business. At that point, I would have to lay off one of our employees. I could not take that type of a loss. So I know it would definitely hurt my business.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. Some Test-Only stations may wish to remain Test-Only stations or they may convert to Test-and-Repair stations. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances.

- c. I believe that the current program should just stay intact as it is. Possibly the Bureau could spend more time looking at ARD's that are not Smog Check stations that are consistently doing improper smog repairs. I have not seen anything in the Bureau's publications about shops getting hammered with citations for doing repairs on vehicles that should only be done at a Smog Check Test-and-Repair station. That, I think would be of more benefit to the consumer and to the industry as a whole.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The suggestion that the Bureau focus on enforcement is noted even though the Bureau's enforcement authority it is not the subject of this regulatory action.

17. Jorge Manzur, Manzur Test-only

- a. This will put most of the Test-Only stations out of business. The few people that stay in Test-Only will have to start doing something else to make money. If you want to put in new equipment, put in new equipment. If you want to get better training, get better training, but the way you're handling this; you are taking all of the business from all the Test-Only stations.

I was a Test-and-Repair station, but I had to become a Test-Only station when more and more cars were being directed and my business was being taken away. I have the training to become a GS, so I'll become a GS because the Bureau is pushing me to go back again. I have to keep going back and forth.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. Some Test-Only stations may wish to remain Test-Only stations or they may convert to Test-and-Repair stations. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances.

- b. I think giving GS stations the ability to do initial testing of directed vehicles is a big mistake. If they can make \$50.00 bucks to pass a car or \$550.00 from CAP repairs if they fail it, they're going to fail it. It's like having a license to steal.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. All Smog Check stations, regardless of station type, are required to perform inspections in accordance with the provisions set forth by statute and regulation. Failing vehicles for the purpose of performing repairs is an improper inspection practice and the Bureau's authority to enforce against this type of behavior is not affected or addressed by this action.

In addition, Bureau oversight of CAP repairs and payments is very thorough. The CAP staff must approve the repairs, and the cost of the repairs, before work commences and payment is made from the Bureau to the GS station. This proposed action does not make any changes to any of the CAP provisions or procedures.

- c. If the Bureau wants to fix the problem, it is so simple. Rather than allow three chances, allow only one. Also add a really high fine. This way the good people are going to stay in business and the bad people or those without training can do something else.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's progressive discipline strategy will not be affected by this proposed regulatory action.

- d. If a vehicle fails at Test-Only it should be required that the consumer provides proof that the car was fixed and passed a pre-test before it goes back to Test-Only for certification. Test-Only stations should not be allowed to perform pre-tests or any other test other than initial and after-repairs tests.

This comment/recommendation was rejected because:

It is not clear how this comment relates to the proposed action or exactly what is being suggested. Vehicles that fail a Smog Check test must be repaired and pass a subsequent inspection, commonly referred to as a "re-test" or "after-repair test," in order to receive a certificate of compliance to complete a vehicle renewal transaction with California's DMV. A pre-test, as provided for by Section 44011.3 of the Health and Safety Code, is not an official inspection and stations charge motorists a separate fee for a pre-test. While vehicle owners are entitled to a pre-test, the state would not advocate making a pre-test mandatory.

- e. If I can pay my rent, it's good enough, but at least I provide for my employees; they have Workman's Compensation, they have Kaiser, and they have dental. We're trying hard, but we cannot compete with people that don't pay Workman's Compensation, don't provide insurance, they don't provide anything. It's really hard to compete.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau has no jurisdiction in the matters mentioned in this comment.

18. Anthony Ortiz, ABC Test-only Centers

- a. I run six Test-Only stations and have been greatly affected by things the Bureau has done. I have tried to fight it, but to no avail. I understand a lot of these are for the consumers' benefit. The reduced number of cars that come our way has affected us. The Bureau already took away the first six model-year vehicles by exempting them. Because of that, I lost all my dealership business. I've had to lay-off employees, and if the Bureau keeps taking away cars, there's no way a Test-Only can keep going. Giving GS stations the initial test will pretty much wipe out another third of my business. I don't know if the Bureau is trying to phase out Test-Only, but if that's the case then come out and say it, so at least we know which way to go.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. Some Test-Only stations may wish to remain Test-Only stations or they may convert to Test-and-Repair stations. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances.

It should also be noted that the Bureau did not impose the exemption of the first six model-year vehicles. The Legislature expanded the late model-year exemption,

included in Health and Safety Code section 44011, from four or less model-years old to six or less model-years old, beginning January 1, 2005.¹¹

- b. The purpose of the Test-Only program was to divide the smog repair and the smog test. The program sent certain vehicles to Test-Only and now GS will perform the test and also perform repairs. Send them to the referee. Why send them to GS?

This comment/recommendation was rejected because:

It is unclear if the suggestion is that all directed vehicles be tested at the state-contracted referee facilities or if the suggestion is that Referees rather than GS stations be authorized to also perform initial inspections on directed vehicles. Either way, current law and the terms of the existing referee contract do not authorize initial testing of directed vehicles at referee facilities. If this suggestion were implemented, consumer convenience would not be improved as there are only 36 referee facilities statewide and funding of this additional referee service would need to be obtained.

- c. Once a car is failed by a Test-Only facility, the Bureau should make it mandatory that it be taken to a Test-and-Repair facility and given either an official test where the consumer can receive a certificate or a pre-test. If a Test-Only fails a car and it is repaired and brought back to us, we cannot turn it down. This would force the customer to go to a facility that is reputable before it comes back to us.

This comment/recommendation was rejected because:

It is unclear what is suggested by these comments. This regulatory proposal addresses authorizing GS stations to perform initial inspections on directed vehicles. The reputation of a station or tests at Test-and-Repair stations is not addressed by this regulatory proposal.

19. John Stevenson, Los Angeles Fire Department

- a. One of the big problems I saw when I was operating my own private Smog Check station was illegal referrals by Test-Only stations to muffler shops for CAT replacement. A lot of times you get a customer that comes into a Test-Only station, the station owner or technician has a buddy down the street who's got a muffler shop. They tell the customer, "You just need a CAT. Go over and see my friend." The law is that they're supposed to give the customer a list of licensed Test-and-Repair stations. These illegal referrals obviously take directly out of the mouths of the Test-and-Repair stations.

Another problem is emission repairs being made on failed vehicles by shops that are not licensed Test-and-Repair or GS stations. You've got just everyday shops that

¹¹ Statutes of 2004, chapter 230 (SB 1107), § 7, effective August 16, 2004; Statutes of 2004, chapter 702 (AB 2104), § 7, effective September 23, 2004; and Statutes of 2004, chapter 704 (AB 2683), § 2, operative April 1, 2005

have an ARD –they’re not really trained or licensed – doing emissions failure repairs. That just takes the food right out of the Test-and-Repair and GS station’s mouths.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. This proposal does not affect or make any change to the limitation on referrals included in Section 3340.16 (e).

- b. The Bureau should make it clear to Test-Only and Test-and-Repair stations that there is a \$50,000 fine for violating some laws.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's ability to enforce against illegal activity, including non-compliance with this regulatory proposal, will not change upon the adoption of this regulatory proposal. The Bureau is not aware of any provision in current law for a \$50,000 fine.

20. Thomas D. Brouillette, High Tech Smog

- a. The original purpose for Test-Only stations was to provide an honest, unbiased smog check at a facility that would not profit from a pass or fail situation. If GS stations are allowed to inspect the Test-Only directed vehicles, which currently must go to a Test-Only station, there will definitely be a benefit for that GS station to fail the vehicle. This creates a temptation for the technician that shouldn't be put in front of him and there is also a possibility of tempting good people to do something wrong. The only reason that I can see for the Bureau to allow directed vehicles to be inspected at GS stations is a belief by the Bureau that there is a shortage of Test-Only stations. If there is no shortage of Test-Only stations now, there certainly will be if you allow the directed vehicles to be tested at GS stations. Test-only stations have the lowest emissions on passed cars and the highest failure rates.

This comment/recommendation was rejected because:

This is a general objection to the adoption of the proposed regulation authorizing GS stations to perform initial tests on directed vehicles. In response to the comment about improper inspections, existing laws and regulations already prohibit improper inspections by GS stations or any other station type. However, the Bureau's enforcement authority is not the subject of this regulatory action. The statement that Test-Only stations have the highest failure rates is not substantiated while the Bureau's data for the 2005 calendar year and first quarter of 2006 shows similar failure rates for Test-Only stations and high performing GS stations. Furthermore, the claim of a highest failure rate at Test-Only stations contradicts the claim that GS stations will improperly fail vehicles.

- b. The Bureau is unable to enforce the laws that already exist. There are too many smog repairs that should be done by a licensed Test-and-Repair station being performed at ARDs without a Smog Check license. I have not seen an example of an ARD station being cited for doing smog repairs. If the law prohibits this, why isn't the Bureau enforcing it?

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. While existing law requires stations that perform Smog Check related repairs to be licensed as a Smog Check test-and-repair station, the Bureau's enforcement authority is not the subject of this regulatory action.

21. Scot Davis, Quality Tune-Up

- a. Testing directed vehicles at GS stations is the smartest thing to do because the real problem is a lack of educated technicians coming into this industry. It is important to start training technicians to repair cars because cars have become increasingly complicated in the last ten years.

This expression of support to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

- b. When there were two or three hundred Test-Only stations statewide, their failure rates were exactly what the Bureau wanted them to be at 25, 28, or 30 percent. The idea was to send the worst cars to Test-Only stations, but now their failure rate is less than the GS stations and barely above the regular Test-and-Repair stations.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The failure rate data referred to in the ISOR accurately reflects the failure rate between the two station types, Test-Only and GS. The data quoted is based on the results (failure rate) of the first test obtained by a vehicle subject to inspection (referred to as an "initial test") regardless of the type of station performing the test. Currently, the failure rate reported by GS stations would not include initial tests on vehicles tested at Test-Only stations.

- c. The other mistake was changing the new car exemption to 6 years. Data shows that 50 percent of the cars on the road are seven years or newer. By the time the first smog check is due, the car has been driven 140 – 150,000 miles and requires repairs. Cars that are 15 years and older account for 80 percent of failures. The Bureau can regulate the number of smog check licenses issued based on car count and/or, volume and put a huge value on the Test-Only license to eliminate the stations that damage

other stations by lowering the failure rate. Under the proposed regulations, the good Test-Only stations will switch to GS.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed action is not related to the exemption of vehicles from the Smog Check Program in general, nor to the number of stations that may be located in a given geographical region.

- d. The Test-and-Repair stations don't test enough cars to qualify for GS. I have been trying to get four shops GS certified for 12 months. My stations perform 200 smog checks per month, the technicians cannot do 10 repairs because the Bureau requires that customers who have failed at Test-Only must be sent to a CAP station. I cannot qualify for CAP if I don't perform the repairs.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The process and/or the qualifications for becoming a GS station are not under consideration in this matter. Furthermore, vehicles that fail at a Test-Only station are not required to go to a GS/CAP station for repairs unless the owner is applying for CAP repair assistance, or the vehicle fails as at gross polluter emissions levels.

22. Eddie Reinsma, R and S Automotive

- a. I own a station that is both CAP and GS certified and support the action authorizing GS stations to test directed vehicles. The Test-Only program took a chunk out of our business and the six-year exemption took another chunk.

This expression of support to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

- b. Is there a way for us to find out the percentage of vehicles being directed to Test-Only? More smog check stations need to be GS stations and participate in CAP. I turn away a lot of CAP work because I can't do it all.

This comment/recommendation was rejected because:

The proposed action does not make any change to the percentage of vehicles directed to a specific station type (i.e., Test-Only) for biennial Smog Check tests or how that percentage is determined. Currently, 3.4 million vehicles are directed annually to Test-Only stations. Allowing GS stations to perform the initial testing of these vehicles will not affect the direction of vehicles at all.

- c. As a GS and CAP station, we often test cars that failed at a Test-Only station, the customer applied for CAP, and the car passed the smog inspection at our station. We don't know if the Test-Only station warmed the car up properly because several days have passed while the CAP paperwork was completed.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed action does not address disputed inspection results between stations.

23. Mike Neldon, Valley Smog Test

- a. I am opposed to the proposed regulation that will allow Test-Only directed vehicles to be tested at GS stations. Clean piping would be an issue at GS stations performing an initial test.

This comment/recommendation was rejected because:

This is a general objection to the adoption of the proposed regulation. The suggestion that the Bureau focus on enforcement is noted even though the Bureau's enforcement authority is not the subject of this regulatory action.

24. Dennis Kerechuck, Kerechuk Motor Service

- a. Cars should be required to be tested every year and not every two years. Most of them will pass today, but maybe just barely. I'm pretty sure that in less than six months the vehicle is back in the same condition.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The annual testing of older vehicles and repair durability are not the subject of the proposed action.

25. Richard Masef, Vallejo Smog Test-Only.

- a. I oppose the proposed GS regulations. I believe that if the GS stations are allowed to test directed vehicles, the vehicles will not be properly warmed-up prior to testing and cars will fail. The GS station will immediately sell CAP a diagnosis and there goes the CAP repair program. The station will also repair the vehicle, which would have passed the first test had it been pre-conditioned properly

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, this regulatory action. As prescribed by Section 3340.42, Smog Check stations and technicians shall conduct tests and inspections in accordance with the Bureau's BAR-97 EIS Specifications or the provisions included in that section. The procedure includes when to begin the inspection to ensure that vehicles are properly warmed-up prior to testing. Improper test procedures are grounds for enforcement action. This regulatory action does not change any of those existing requirements.

- b. There are so many things going on out there in the Test-Only business and in Test-and-Repair that are horrible. I believe that, if we shrink the playing field and get rid of the dead weight – the people who have no business doing this – there will be more for all of us out there. I'm into enforcement.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's authority to enforce the Smog Check program is not being changed by this regulatory action.

26. Richard Reeves, Acutech Auto.

- a. I approve of the proposal to allow initial testing of directed vehicles at GS stations. I would like to see my business increase, since I have lost business to the Test-Only program.

This expression of support to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

27. Tiffany Moore, A Smog Test-Only, Inc.

- a. I oppose the testing of directed vehicles at GS stations because I believe it will create a conflict, especially for the CAP program. Where are the checks and balances going to be if GS stations are allowed to certify Test-Only directed vehicles initially? It was originally stated in the SIP that there was supposed to be unbiased testing done by the State; that's not happening. GS stations are already allowed to certify vehicles that initially fail at a Test-Only station. Now they're also going to be able to certify Test-Only directed vehicles initially. I don't agree with that.

This comment/recommendation was rejected because:

The proposed action that will allow GS stations to initially test and certify directed vehicles is not related to the ability of GS stations to repair, test and certify directed

vehicles that initially failed at a Test-Only station. Current statute and regulation already authorize that. Paragraph (3) of subsection (a) of Section 3392.2 provides, in pertinent part, that a GS station shall provide for "...the after-repairs certification of failed vehicles that were directed to and initially tested at Test-Only stations pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code provided that the vehicles are repaired at the GS station." That provision was adopted pursuant to Health and Safety Code section 44014.2.

- b. According to the IMRC, 92 percent of people don't feel it's inconvenient to go to a Test-Only station.

This comment/recommendation was rejected because:

The inconvenience the ISOR addresses is the inconvenience consumers face when directed to a specific station type (Test-Only stations) for Smog Check certification. The fact that motorists with directed vehicles must seek a specific station type for inspection and another station type for repairs if the vehicle fails, has been viewed as an inconvenience. This was definitely true when the directed vehicle program began in 1997 when only a few Test-Only stations existed. Since that time the number of Test-Only stations has grown to 1800. While the greater number of Test-Only stations provides motorists with more Test-Only stations to choose from, this proposal will provide motorists with even more choices, including the choice of a GS station. Under this proposal, motorists would be able to choose between a Test-Only station and a GS station. The additional functions of a GS station compared to those performed by a Test-Only station are seen as consumer conveniences. GS stations can perform emission-related repairs and state funded repairs for the state's CAP. In addition, they must meet and maintain specific performance standards.

- c. You've opened an opportunity for women especially to feel more comfortable going to a place (Test-Only stations) where they're not going to be sold repairs that they don't need. It has been proven that the automotive repair industry is completely biased and corrupt.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau's ability to enforce against illegal activity, including non-compliance with this regulatory proposal, will not change upon the adoption of this regulatory proposal.

- d. I believe there is a need for investigation into the impact on the Test-Only industry of allowing GS stations to test directed vehicles.

This comment/recommendation was rejected because:

It is unclear as to what investigation is needed. The ISOR addresses the purpose, factual basis and justification for the proposed action. An estimate of the potential

business impact to Smog Check stations, including Test-Only stations, and consumers is also included in the ISOR. More specific or exact estimates cannot be made because it is impossible to predict how many Test-Only directed vehicles would be taken to GS stations for initial tests.

- e. The Bureau needs to take into consideration how this will be explained to consumers. They're already confused. We all get the questions. We're out there explaining to the consumer what's going on – the changes that you're making. There's information on the back of the renewal notices explaining the Test-Only program but it's vague and you're going to change it again

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The Bureau is aware that changes will need to be made to the registration renewal notices form and has already begun discussion with DMV staff. Once the regulatory proposal is adopted, the Bureau plans to take steps to inform motorists and Smog Check stations of the changes.

28. Dennis Decota, CSSARA.

- a. The California Service Station and Automotive Repair Association, is in favor of the proposed regulations that are under review. GS is a very, very important part of any future Smog Check program. GS stations receive the most oversight of any testing station. It is important to properly inform the consumer of a one-stop shop for their automotive repair and Smog Check. I think the consumer deserves that from a financial standpoint. The Bureau publication, *The Repair Reporter*, shows that 53 percent of all Smog Check tests are done at Test-Only stations. Approximately 50 percent of those were Test-Only directed due to a high emitter profile. It's important that we elevate the program and those who participate. It's got to be a performance-based program, with the proper incentives in order to address air pollution problems in this state.

This expression of support for the proposed action was accepted and considered in the adoption of the proposed action.

- b. R & S Service is a GS station. They are having trouble getting enough tests through to justify what he's doing. In their GS Report on the fourth quarter of 2006, it clearly states that they did not meet the successful emission failure repair criterion. All GS stations are required to perform a minimum of ten; they had five. They were at 50 percent of what they needed. They simply don't have the volume in order to perform to the regulation. These things must be addressed too. I think that is why we're in the support of the GS regulation changes. It is what was originally intended in Section 44010.5 (b)(2) and 44014.2. CSSARA sponsored the legislation that created the GS program and we feel that it just makes the program that much better.

This expression of support for the proposal to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

29. Ken Giusti, Speedee Oil Change & Tune-Up.

- a. I think there should be enough work for both Test-and-Repair and Test-Only station types to survive. When I installed two Dynamometers, the decision was based on a pretty large test volume at my shop. But if I look at my business from 2003 and compare the numbers to 2006, I've lost about 59 percent of my testing volume and approximately 41 percent of my revenue, or over \$106,000.00, while still paying for the equipment. My goal is to become a GS station and create a one-stop-shopping location for my customers. So, I do support the proposals on the table if both are implemented at the same time.

This expression of support for the proposal to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

30. Ben Rue, CA Test-Only Center.

- a. Allowing GS stations to test directed vehicles is absolutely wrong. The purpose of the Smog Check Program, is to make sure all aspects of vehicle as they were originally manufactured and designed certified are intact as maintained.

When the USEPA audited the California Emissions Program, back before there was Test-Only, they found that Test-and-Repair stations were failing vehicles that were actually compliant and passing vehicles that weren't compliant because they did not know how to repair them. When the Test-Only program was initiated cars that failed the smog check had to return to the Test-Only station after repair to be certified. This created a huge problem because there were very few people in the automotive repair service industry that actually knew how to diagnose and repair the vehicle that failed. Before, they could get away with fraudulently certifying the vehicles, now the cars had to go back to Test-Only and they couldn't do that anymore.

Rather than telling these Test-and-Repair stations that they need to learn how to repair vehicles, the Bureau created the GS program. GS stations eliminated the need for vehicles to return to the Test-Only station, because the GS stations could certify them. I have never yet seen even one single solitary vehicle certified at a GS station that has actually been repaired correctly.

This comment/recommendation was rejected because:

This proposal will authorize GS stations to perform initial tests on directed vehicles. The issue of vehicle being improperly or illegally repaired or fraudulently certified is

not addressed in this regulatory proposal. Further, improper testing and/or repairs are already grounds for enforcement action pursuant to existing laws and regulations.

- b. The Bureau says the GS stations are closely monitored and audited. One of the qualifications for GS certification is a high failure rate as compared to Test-Only. One of the reasons most GS stations have this high failure rate is that they are failing vehicles that are compliant. The other reason is that when they are trying to repair the vehicles that they actually do fail, they keep testing the vehicles over and over and over and over again because they can't fix them. It's actually the worst performing stations that become the GS stations based on this qualification.

This comment/recommendation was rejected because:

This is a general objection to the adoption of the proposed regulation authorizing GS stations to perform initial tests on directed vehicles. In response to the comment about improper inspections, existing laws and regulations already prohibit improper inspections by GS stations or any other station type. The Bureau's data for the 2005 calendar year and first quarter of 2006 shows similar failure rates for Test-Only stations and high performing GS stations.

- c. Health and Safety Code section 44010.5 (b)(2) does not authorize the Test-Only directed vehicles to be initially tested at GS stations.

This comment/recommendation was rejected because:

Please refer to Section II., comment 9. a., above.

31. Cary A. Biggert, Pro Auto.

- a. I support the proposal to allow initial testing of directed vehicles at GS facilities, but I have a problem. I contract with the State of California and other government and municipal agencies to perform vehicle fleet services. The state or government fleet garages do most repairs with the emission system. Most of the vehicles we test both under our contracts and for our regular customers, are newer vehicles. We cannot qualify for GS certification because we have a zero failure rate.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The process and/or the qualifications for becoming a GS station are not under consideration in this matter. However, the expression of support for the proposal to allow GS stations to perform initial tests of directed vehicles was accepted and considered in the adoption of the proposed action.

32. Warren Parr, Complete Car Care.

- a. I am in favor of allowing GS stations to do initial testing of directed vehicles. During my first year as a Test-and-Repair facility in 2000, I bought about 600 certificates. A few years ago it was reduced to 200, a loss of two thirds of our business. When the State of California recruited me to become a GS station, certificate sales increased to about 250 a year.

This expression of support for the proposal to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

- b. Initially, I was very happy about the Test-Only program because I always felt bad when I had to tell someone that his or her car didn't pass. I was happy to pass that task to the Test-Only stations and not have to be the bearer of bad news. I was very happy to fix their car. However, when I became a CAP station, the Test-Only stations were not handing out the CAP application to directed vehicles that failed the smog test. The reason for that is that the Test-Only stations would offer the customer a discounted re-test if they brought the car back after it had been repaired. If the customer applied for CAP repair assistance, the repairs and the re-test would be performed at a GS station and the Test-Only station would lose the revenue from the re-test. So there was a financial incentive for the Test-Only station not to pass out the CAP applications.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The proposed regulation does not make any change related to informing consumers about the state's CAP. Currently, all station types are required by regulation to provide consumers with a vehicle inspection report (VIR). CAP information is printed on the VIR generated for every failed vehicle. In addition, the state provides informational signs for posting at all of the three types of Smog Check stations (i.e., Test-Only, Test-and-Repair and GS) that include information about the Bureau's CAP. Marketing techniques such as the offer of a discounted re-test after failing the Smog Check test are not addressed in this proposal. Furthermore, the Bureau does not regulate this type, or any other type of marketing strategy.

- c. If I am allowed to test directed vehicles, every time a vehicle fails whether it was directed to Test-Only or not, the consumer will be given a CAP application. CAP will pay up to \$500.00 for a repair, and we have found that customers see this as an opportunity to spend beyond the \$500.00 to better repair their vehicle. The extra money spent on repair results in a better quality repair, because the customers are willing to allow more repairs if they are subsidized through the CAP program. The standards are quite a bit higher at a GS station, each time we make a diagnosis we are required to obtain approval from CAP before making the repair.

This expression of support to allow GS stations to perform initial tests on directed vehicles was accepted and considered in the adoption of the proposed action.

33. Keith Bryant, Santa Clara County Test-Only

- a. GS has made the claim that it's one-stop-shopping. It is not truly one-stop-shopping. The consumer still has to apply for CAP which means taking the vehicle from the station until CAP approves the application, and then the vehicle is driven back to the station for repair. It's not one-stop, they still have to come back. How is that providing any convenience or additional service to the consumer?

This comment/recommendation was rejected because:

- This comment is outside the scope of, and not germane to, the proposed action. One-stop-shopping as used in the ISOR, refers to directed vehicles that seek initial tests at GS stations and elect to have their vehicle repaired at the same station regardless of whether or not the vehicle qualifies and takes advantage of the state's CAP repair assistance option. Consumer convenience is provided when consumers have additional station types offering similar services. Furthermore, CAP is a voluntary consumer program. GS stations may repair vehicles outside CAP if the customer does not qualify for CAP assistance, or if the customer does not choose to participate.
- b. GS stations have realized an increase in repairs since of the advent of the Test-Only program and CAP repair assistance whereas basic Test-and-Repair stations have not. So exponentially, they've seen their repair business grow. Sure, they've seen fewer tested vehicles, but that's been offset by the increase in repair business for those that actually promote CAP repair assistance to their consumers. I'm in a small little community of 36,000 people and there are now three GS stations. The increase in the failure rates, attributable to NOx testing with the advent of Smog Check II, has created an increase in repair work, which the GS stations have directly benefited from. They're taking that business from the Test-and-Repair shops down the street that are not GS. So the argument that they've lost business and lost all the smog business because it's all gone to Test-Only is ludicrous. Maybe they've lost it on the initial test, but all three of the GS stations in my community have grown and expanded.

This comment/recommendation was rejected because:

The primary purpose of the proposed action is to provide convenient one-stop-shopping for consumers with Test-Only directed vehicles, not to redistribute among the various station license types. Test-Only stations have had a distinct and somewhat unfair advantage over Test-and-Repair stations in that a significant share of their business is actually directed to them by the state. Consequently, Test-Only stations only have to compete with other Test-Only stations for that share of the market. A Test-and Repair station, on the other hand, must compete with other Test-

and-Repair stations as well as Test-Only stations for all of their testing business. Allowing GS stations to perform initial tests of directed vehicles will help this higher-performing segment of the Test-and-Repair industry compete with Test-Only stations on a more equitable level.

- c. GS stations have intended to undermine this process from the inception of the Smog Check II program. Allowing GS stations to perform initial tests of directed vehicles really takes away the unbiased, no conflict of interest inspection process that the whole Test-Only program is designed to create. If you want to do this, then do away with the Test-Only program, give Test-Only stations the opportunity to either do repairs that are not related to smog emissions such as car repair and brakes, but not the cars that have failed. You're going to let Test-and-Repair stations do repairs on these cars that were supposed to be directed to an unbiased, no conflict inspection process. Now you have that conflict of interest. So what's the point of having Test-Only? It's not fair and you really need to take a closer look at how you're implementing these programs.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. Station types are defined by statute and clarified by regulation. The suggestion that Test-Only stations be authorized to perform repairs would require a change to Health and Safety Code Section 44014.5 (b) and is outside the scope of this regulatory proposal.

34. Dave Williams, ATS, Inc.

- a. I am opposed to the proposed regulation that would afford GS stations the added privilege of initial testing of directed vehicles. Let there be no doubt, if this portion of the regulation were to proceed unabated, it would devastate a very large portion of the Test-Only stations throughout this state and hasten the destruction of the Test-Only program as a whole.

This comment/recommendation was rejected because:

All Smog Check businesses have and will continue to have choices regarding what type of business they wish to operate. A Test-Only station may decide to remain a Test-Only station or they may convert to a Test-and-Repair station. Test-and-Repair stations may want to apply for GS certification, if they are not already certified. Those are individual choices that each business owner must make, based on their individual circumstances. Furthermore, Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

- b. The section of the Health and Safety Code cited by the Bureau as the authority for this regulation is improper and unlawful. I know because I was there when Assemblyman Boller introduced the amendments that added paragraph (2) to subdivision (b) of Section 44010.5 in AB 2515. Included in that bill was an amendment that also added Section 44014.2, which established the GS program. AB 2515 passed with wide bipartisan support and was signed into law by Governor Wilson in October of 1996. For ten long years, through three administrations – the Wilson Administration, the Davis Administration and the first two years of the Schwarzenegger Administration – no one has ever been so brash as to attempt to interpret this section of the Health and Safety Code as the Bureau currently proposes.

I am greatly disturbed by the idea of a few bureaucrats deciding ten years after the fact that they want to apply a new meaning to the law that I, along with a few others, had helped to initiate, draft, and promote for the benefit of the state. I can state with confidence derived from first hand knowledge that for anyone to interpret this section of the Health and Safety Code to apply to anything other than licensed Test-Only facilities is an egregious error of fact. Moreover, by continuing to promulgate this portion of the proposed regulation, the Bureau is breaking a long standing legal precedent regarding the interpretation of Section 44010.5 (b)(2).

The issue which subdivision (b) of Section 44010.5 addresses is the increase in directed vehicles and the Bureau dealt with that several years ago. The Bureau began increasing the amount of directed vehicles beyond the minimum 15 percent as far back as the year 2000. The Bureau directed those vehicles strictly to licensed Test-Only facilities because that is the only proper and lawful interpretation of the statute. No doubt, the reason the Bureau currently has chosen not to mention the primary issue raised by subdivision (b) is because it would self-defeat the very regulation they are proposing.

There's no standing in the law for this. It's a misinterpretation of a long-standing interpretation. I respectfully request the Bureau remove all language referring to the unlawful added privileges to GS facilities from the proposed regulations so as to not unduly delay the needed implementation of the LPFET procedures.

This comment/recommendation was rejected because:

Clearly there is a difference of opinion as to the meaning of paragraph (2) of subdivision (b) of Section 44010.5 of the Health and Safety Code. The interpretation expressed in this comment is apparently based on recollection, while the Bureau's interpretation is based primarily on the legislative record of AB 2515. After a complete and accurate analysis of the legislative history, it is clear that the effect of Section 44010.5 (b)(2) is to show a preference for expanding the Test-Only component of the Program through licensed and certified GS Test-and-Repair Smog Check stations rather than licensed Test-Only stations.

The Bureau's position is supported in the legislative record of AB 2515 in the amendments to the bill itself and various committee and floor analyses of that measure. Specifically, reference is made to the Senate floor analysis for AB 2515, dated August 20, 1996, as evidence of legislative intent supporting the Bureau's interpretation of paragraph (2) of subdivision (b). What that analysis said was, in pertinent part, "...if the test-only program is expanded beyond 15 percent of the vehicles subject to testing, *smog stations that are licensed and certified pursuant to Sections 44014 and 44014.2 of the Health and Safety Code* would have the first opportunity to perform such work." (*emphasis added*) The reason that statement is so significant in understanding the meaning of paragraph (2) is that a previous version of AB 2515 did, in fact, make specific reference to Test-Only stations being afforded the first opportunity to perform the additional work. That language was first introduced in an April 23, 1996 amended version of AB 2515. However, the bill was subsequently amended in the Senate on August 20, 1996, removing the Test-Only reference and replacing it with the phrase "*smog stations that are licensed and certified pursuant to Sections 44014 and 44014.2.*" That language remained unchanged thereafter and was included in the chaptered version of AB 2515 (Chapter 1088, Statutes of 1996). That AB 2515 was specifically amended to refer to voluntarily certified Smog Check stations (i.e., GS stations) makes clear that the Bureau has the required statutory authority to pursue the proposed action.

The August 20 analysis of AB 2515 also makes reference to "the development of a 'gold shield' program for the *test and repair* of specified vehicles" (*emphasis added*) and "'gold shield' (combined test and repair) smog check facilities." This is further evidence of the Legislature's understanding and true intent regarding Smog Check stations certified pursuant to Section 44014.2; i.e., GS Test-and-Repair stations.

Furthermore, the term "smog check station," as defined in subsection (c) of Section 3340.1, is a generic term that may be used to refer to either a Test-Only station or a Test-and-Repair station. In the context of Section 44010.5 (b)(2) – and given the specific reference to certification pursuant to Section 44014.2 – the term "smog check stations" can only be interpreted as referring to Test-and-Repair stations. That is the most reasonable and logical interpretation since only Test-and-Repair stations may be certified as GS stations pursuant to Section 44014.2. Therefore, it cannot reasonably be concluded that allowing GS stations to perform initial tests of directed vehicles is illegal or is in directed conflict with Section 44010.5. Rather, it should be viewed as an exception, not a contradiction as suggested in this comment.

As to the comment regarding the increase in directed vehicles, the ISOR contains a very clear and specific reference¹² to the increase in the percentage of vehicles that are directed to Test-Only stations. That percentage has been increased from 15% to 36% over time in response to a 2000 commitment to the federal government (August 17, 2000 letter to U.S. EPA from ARB and the Bureau), and as provided in accordance with the requirement of paragraph (1) of subdivision (b) of Section

¹² Initial Statement of Reasons, II. Initial Testing of Test-Only Directed Vehicles at Gold Shield Stations, Factual Basis, page 11, second paragraph.

44010.5. As part of that commitment, California advised that in addition to increasing the number of vehicles to be directed, the type of station that could perform initial tests on directed vehicles could be expanded to include *high-performing* stations. This was followed by regulations in 2003 that specified performance criteria for GS stations. Based on the established performance criteria, GS stations are considered to be *high-performing* stations. Therefore, it should be clear that an increase in the capacity of the program was included as one of the elements discussed in the Factual Basis for the proposed action.

Therefore, for all of the foregoing reasons, the Bureau continues to rely on paragraph (2) of subsection (b) of Section 44010.5 as the authority for this element of the proposed action.

- c. Ten years after the fact, for the Bureau to now claim they wish to promulgate this regulation simply because some very concentrated repair interests have somehow convinced them that there is a bastion of angry public sentiment within the program is laughable. That consumers are somehow clamoring for more choices and so it must be done is ridiculous. I find this preposterous on the face of the evidence. Preposterous first because the public discontent with the program doesn't exist except in the fabricated accounts of narrow repair interests. Second, the I/M Review Committee took up this very issue last year, the result of which was to commission a study only to find out there was no public discontent with the program.

This comment/recommendation was rejected because:

The inconvenience the ISOR addresses is the inconvenience consumers face when directed to a specific station type (Test-Only stations) for Smog Check certification. The fact that motorists with directed vehicles must seek a specific station type for inspection and another station type for repairs if the vehicle fails, has been viewed as an inconvenience. This was definitely true when the directed vehicle program began in 1997 when only a few Test-Only stations existed. Since that time the number of Test-Only stations has grown to 1800. While the greater number of Test-Only stations provides motorists with more Test-Only stations to choose from, this proposal will provide motorists with even more choices, including the choice of a GS station. Under this proposal, motorists would be able to choose between a Test-Only station and a GS station. The additional functions of a GS station compared to those performed by a Test-Only station are seen as consumer conveniences. GS stations can perform emission-related repairs and state funded repairs for the state's CAP. In addition, they must meet and maintain specific performance standards.

35. Gerald L. Raver, Glenmoor Auto Repair.

- a. I had my legislator, Liz Figueroa, make a phone call to Sacramento, to get me into the CAP program because I didn't have enough failed cars to meet the criteria even though I had been in the business 30 years. Last week, CAP took every invoice in my

shop and reviewed every one of them. Believe me, I repair cars buddy. When vehicles repaired at my shop go out of my shop, my children will be able to breathe out of the tailpipe and they aren't going to come back if the customer does the proper maintenance on the vehicle.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to, the proposed action. The process and/or the qualifications for becoming a GS station are not under consideration in this matter.

III. Combined Low-Pressure Fuel Evaporative System Testing and Initial Testing of Test-Only Directed Vehicles at Gold Shield Stations

1. Approximately 41 individuals submitted form letters containing essentially the same comments, as follows:

- a. My small business cannot afford the additional investment in equipment unless the proposed GS component of these regulations is implemented. Without parity with Test-Only I will be forced out of the Smog Check Program completely. It is imperative that those of us who have invested and partnered with government in Smog Check be able to compete and retain our customer base. I believe that GS/CAP will be the best-of-the-best in repairing emissions related failures, thereby saving consumers money and allowing them the convenience of one-stop-shopping.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

2. John Everett, R & S Service

- a. I am a GS/CAP station. I am in favor of both aspects of the proposed action. The evaporative system – something does have to be done. There is no question about it. Since the older cars don't have self-tests, there's no way to tell if it's actually functioning.

I've been keeping track since late 2002 of how many smog tests I do per month. The last two years we're down to an average of two smog tests a day. That is how many cars have been going to Test-Only stations. If we're going to have to spend more money then we definitely need to be able to do initial tests on directed vehicles.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

3. Bruce Ferrario, Owner, Dave Heon, Lorenzo Fregoso, Oscar Fregoso, Technicians, Four Star Automotive Inc

- a. We have reviewed the Proposed Regulatory Action and Public Hearing document regarding LPFET and initial testing of directed vehicles at GS stations. I have a GS station and without additional vehicles to test, the purchase of additional equipment would create an unfair economic burden. The bottom line is that we need more vehicles to test in order to be successful partners with the Bureau in the future. We support the purchasing of the LPFET testing equipment as long as we are allowed to perform the initial tests on directed vehicles.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

4. Christopher Walker, Law Offices of Nossaman, Guthner, Knox & Elliott, LLP, on behalf of the California Automotive Business Coalition (CalABC)

- a. CalABC supports the LPFET, as long as the GS component is part of the regulatory package. Support for one is predicated on the existence of the other. That is primarily because of CalABC's long standing position that program performance should be the ultimate priority of everyone. Program performance is what this regulation starts to promote for the first time. The proposed regulation, as drafted, will fundamentally improve the effectiveness of the Smog Check Program and its ability to remove excess emissions from vehicles. While the costs associated with new equipment mandates are a concern, it is mitigated by the other changes made by the regulatory proposal under Section 3392.2. To ask Test-and-Repair businesses to invest another \$3,00.00 in equipment the economics have to be fair. We think that the most equitable way to distribute vehicles in the state, particularly directed vehicles is based upon performance. GS stations show consistently, time and time again that they are the highest performing stations.

This expression of support was accepted and considered in the adoption of the proposed action.

5. Tom Dotts, High Tech Auto

- a. If this GS and the LPFET does go through, I feel that it will give the consumer more distrust of the Smog Check Program – more that what they already have.

This comment/recommendation was rejected because:

As stated in the ISOR, this regulatory proposal is designed to increase emission reductions achieved through compliance with the Smog Check program and to ensure continued program compliance by consumers and the Smog Check industry.

Improving air quality is essential to the health of all Californian's especially those at greatest risk -- senior citizens, the infirm, and children.

6. Christopher Irons, Smogs Unlimited.

- a. I'm opposed to both of the proposed regulations. In the proposed regulation package Information Digest, there is a policy statement overview, under the heading of Initial Testing of Test-only directed vehicles at GS Stations. It states in the second paragraph that customers will benefit from increased services for one stop shopping and greater emissions reductions due to a higher level of state oversight associated with GS stations. In the second paragraph on the next page there is little to suggest that it will have any impact on emission reductions achieved because Test-Only and GS stations perform similarly, based on analysis of failure rates. The only added convenience will be for consumers whose vehicles fail and require repair.

This comment/recommendation was rejected because:

This is a general objection to the adoption of the proposed regulation authorizing GS stations to perform initial tests on directed vehicles. The ISOR also addresses the inconvenience consumers face when directed to a specific station type (i.e., Test-Only stations) for Smog Check certification. The fact that motorists with directed vehicles must seek a specific station type for inspection and another station type for repairs if the vehicle fails, has been viewed as an inconvenience. This was definitely true at the time the directed vehicle program began in 1997 when only a few Test-Only stations existed. Since that time the number of Test-Only stations has grown to approximately 1,800. While the greater number of Test-Only stations provides motorists with more Test-Only stations to choose from, this proposal will provide motorists with even more choices, including the choice of a GS station. Under this proposal, motorists would be able to choose between a Test-Only station and a GS station. The additional functions of a GS station compared to those performed by a Test-Only station are seen as consumer conveniences. GS stations can perform emission-related repairs and state funded repairs for the Bureau's CAP. In addition, they must meet and maintain specific performance standards. Furthermore, Health and Safety Code section 44010.5 (b)(2) requires that GS stations be allowed to perform initial testing of directed vehicles.

7. Bud Rice, Quality Tune-Up.

- a. I support LPFET testing as long as the component allowing GS stations to perform initial tests on directed vehicles is included. The consumer choice and convenience issue is important; this allows our long term customers the ability of having their vehicle inspected at the station that already provides oil changes, brake jobs, shock absorbers, etc. One-stop-shopping is important to the customers who appreciate the fact that they can come to us and would like us to perform their initial smog tests as well.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

8. Niki Tam, Acutech Auto.

- a. I am in support of implementing the LPFET testing system and the initial testing of directed vehicles by GS Stations. In my area the cost of smog tests is roughly 20 percent higher at a Test-Only station than at a Test-and-Repair station, so if customers are given a choice, it will be a benefit to both the stations and the customers.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

9. Tony G. Mak, Speedee Oil Change & Tune-Up

- a. I support both the LPFET and the initial testing of directed vehicles at GS stations. I see the LPFET as a more thorough inspection of the vehicle's fuel evaporative system. On older vehicles the evaporative system is not monitored as it is on cars equipped with OBD II. This test should be done not only to reduce emissions but also to improve the performance of the customer's vehicle and increase the profits of smog check stations. The testing of directed vehicles at GS stations is a convenience for the consumer. When directed vehicles are brought to my station for a smog check inspection I have to explain that I cannot test the vehicle. I find it to be inconvenient and confusing for customers to have their car tested at a Test-Only station.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

10. Gerald L. Raver, Glenmoor Auto Repair.

- a. Before the Bureau began directing somewhere between 50 and 60 percent of vehicles to Test-Only stations, we did approximately 145,000 Smog Checks a year. Today, we do approximately 62,000 a year. As you can see, that's a 70 percent loss. I'm in favor of both of the items proposed by this regulation and I hope to see it pass.

This general expression of support for the proposed action as a whole was accepted and considered in the adoption of the proposed action.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

The following individuals submitted written comments after the close of the public comment period. These comments are included in the file without response.

- 1. Donald G. Townsend, A & D Auto Electric**
- 2. Mrs. Aaron, a Test-Only station owner**
- 3. Mr. Scheuerman, a Test-Only station owner**
- 4. Dave Williams, President, ATS, Inc.**